

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**



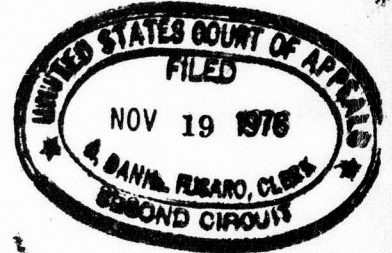


# No. 76-6150

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## United States Court of Appeals

FOR THE SECOND CIRCUIT



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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Plaintiff-Appellee*

v.

LOCAL 14, INTERNATIONAL UNION OF OPERATING ENGINEERS;  
LOCAL 15, INTERNATIONAL UNION OF OPERATING ENGINEERS;  
*ET AL., Defendants-Appellants*

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On Appeal from the United States District Court  
for the Southern District of New York

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JOINT APPENDIX

Volume I: Pleadings

PAGINATION AS IN ORIGINAL COPY

BONNER, THOMPSON, KAPLAN & O'CONNELL

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November 24, 1976

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(ADMITTED ALSO TO VA. & MD.)

A. Daniel Fusaro, Esquire  
Clerk, United States Court of Appeals  
for the Second Circuit  
United States Courthouse  
Foley Square  
New York, New York 10017

Attention: Mrs. Brullo

Re: EEOC v. Local 14, et al.  
(No. 76-6150)

Dear Mrs. Brullo:

This letter will transmit ten copies of the Joint Appendix which has been revised in accordance with our several conversations this week, and will explain those revisions.

On Monday, you called Mr. O'Connell of this firm to explain that the following pages of the Appendix were not clear enough for the Court to read:

2-30	196	407-412
37-42	210-221	429-434
47-78	287-298	439-444
90-91	347-369	445-456
101-109	377-380	465-503
171	385	537
		547-552

I explained to you on Tuesday that the reason for this was the somewhat illegible copies of the originals. Nevertheless, we agreed that the Appendix would be improved by retyping from the originals, or otherwise improving the legibility of the documents. You and I also agreed that if, in some cases, the parties felt that particular pages were not necessary to the determination of the appeal, we should so indicate and not recopy those pages.

We have complied with your request in the following

BONNER, THOMPSON, KAPLAN & O'CONNELL

A. Daniel Fusaro, Esquire  
November 24, 1976  
Page two

manner. First, we have retyped almost all the pages listed by you, and had them reprinted and rebound in the Appendix. There is no longer any question about their legibility.

Second, as we discussed, the statistical material between pages 2-30 was in part illegible in the Court's original record. You indicated that this should not be redone if the effect was to make it more legible than the original material before the Court. Nevertheless, we have reprinted this material and it is now as legible as possible.

Third, Local 14 included in the Appendix copies of various New York laws between pages 445-456 and 465-503. These items were very indistinct in the Court's originals. Local 14 has provided me with rezeroxed copies of these laws, which we have printed in the Appendix. While their reproduction is not ideal, it is considerably better than before. In any event, these items are public statutes which might have appropriately been left out of the Appendix, since they are available to the Court.

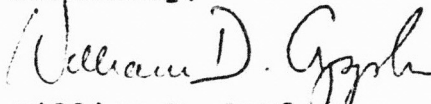
Fourth, and finally, the parties agreed that a few of the pages need not be retyped and reprinted, because they were not of great importance. Those pages are, as we discussed, marked with an X in the corner of each page in the Appendix. Pages treated in this manner are:

47-48  
51-59  
62-69  
72-78

These represent unimportant portions of the by-laws of Local 14; the important pages, 49-50, 60-61, and 70-71, have been retyped.

I believe this responds to your request. If you have any questions, please direct them to Ms. Wood who will be delivering the Appendices (including Volume I, where we corrected pp. 282-292 as requested). Thank you for your attention to this matter.

Sincerely,

  
William D. Appler

WDA/ba

Enclosures

cc: All Counsel



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~~CONFIDENTIAL~~

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EMPLOYMENT OPPORTUNITY COMMISSION-Sub.6/4/23 for plaintiff:

1. مجلس - Council

-U.S. AFTY.

U.S.D.C.

POLEY SQUARE,

U.S.C.R. 10007

~~FOR DEATS. PRESIDENT-ROOSEVELT-NEWSPAPER-SON.~~

-300- ~~Final - January~~

NYG-NY-10922

MU8-7300 (FORALLIED BLDG METAL IN)

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(for Construction Equipment Rental)

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11 Park Place, NY 10007 RA 7-2242

French, Pink, Markle & McCallion (for Mason

builders and Cement League)

110 East 42nd St. NY 10017 OX 7-0860

Sr. G. Gould Climenko & Kramer

for the General Contractors Assn. of I

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## BEST COPY AVAILABLE

DATE	PROCEEDINGS	Date Order or Judgment Made
11-7-72	FILED COMPLAINT. IS. UNDESKINERS.	
11-20-72	Filed Order to Show Cause re: take depositions. Ret. 6/27/72. at 2PM in Room 118 in Court Edelman, Ch. J.	
11-24-72	Filed Memorandum of Law in support of its motion to take depositions.	
11-28-72	Filed Stip & Order for deft. Local 15 International Union of Operating Engineers to answer to complaint is extended to 7/24/72. So Ordered Plaintiff J.	
11-3-72	Filed Notice to take Deposition and issued subpoena. to William Wade.	
11-3-72	Filed " " " Thomas M. Geraghty.	
11-3-72	Filed " " " William L. Delaney.	
11-3-72	Filed " " " Frank Gumma.	
11-3-72	Filed " " " Daniel J. Murphy.	
11-3-72	Filed " " " John T. Murphy.	
11-3-72	Filed " " " Edward Murphy.	
11-3-72	Filed " " " George Fugh.	
11-3-72	Filed " " " John Regan.	
11-3-72	Filed " " " Thomas A. Maguire.	
11-3-72	Filed " " " " " " "	
11-3-72	Filed " " " Thomas Nolan, Jr.	
11-3-72	Filed " " " " " Sr.	
11-3-72	Filed " " " Ralph Dalton.	
11-7-72	Filed memorandum of law on behalf of the deft. Local 15.	
11-7-72	Filed deft Local 14's opposing memorandum.	
11-7-72	Filed defts affidavit in opposition to the Gov't s motion to take depositions.	
11-7-72	Filed deft Local 15, affidavit in opposition of pliff's application for leave to take depositions pur. to F.R. Civ. 30(a)	
11-7-72	Filed MEMO. FND. on Order to Show Cause filed 6-20-72 Mot on is denied in all respects for failure to make out some unusual or special conditions or circumstances which would warrant such extraordinary relief. So Ordered. Edelman	
11-10-72	Filed stip and order that time of deft Allied Building to answer the complaint is extended to 7-24-72. Plaintiff J.	
11-10-72	Filed stip and order that time of deft Construction Equipment Rental to Answer the complaint is extended to 7-25-72 Plaintiff J.	
11-17-72	FILED Deft. Local 14 Interrogatories to Plaintiff.	
11-17-72	FILED ANSWER of deft. Internatl. Union of Operating Eng. Local No. 14 to complaint. DCO&D	
11-25-72	FILED ANSWER of Construction Equipment Rental Assn. to complaint. MCP &	
11-24-72	FILED ANSWER of Internatl. Union of Operating Engineers, Local No. 15 to complaint. C&R	
11-25-72	FILED ANSWER of Building Contractors' and Mason Builders' Association of Greater New York, Inc. and The Cement League to complaint. FFM&M	
11-25-72	FILED ANSWER of Construction Equipment Rental Assn. to complaint. MCP &	
11-25-72	FILED ANSWER of Building Contractors' and Mason Builders' Association of Greater New York, Inc. and The Cement League to complaint. FFM&M	
11-26-72	Filed stipulation and order extending deft. Allied Building Metal Industries, Inc.'s time to answer complaint to 8/31/72. So ordered. Frankel, J.	
11-26-72	Filed ANSWER of The General Contractors Assn. of New York, Inc. to complaint. SGO	
11-26-72	Filed Interrogatories to Plaintiff Deft.	
Aug 7-72	Filed pliff's interrogs. to deft	
8-7-72	Filed U.S.A. answers to defts' interrogatories.	
8-25-72	Filed pliff's interrogs. to deft.	
8-28-72	Filed deft's Local 15 interrogs., to pliff.	
8-29-72	Filed pliff's Answers to interrogs.	
8-31-72	Filed stip and order that time of deft Allied Building Metal Industries to Answer the complaint is extended to 10-1-72. Gagliardi J.	
Sept 18-72	Filed pliff's Interrogatories to deft International Union of Operating Engineers.	
Sept. 20-72	Filed pliff's Answers to the interrogs., of deft Local 15.	

CONTINUED PAGE 2



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(cont to page 3) 3

JUDGE TENNEY

D. C. 110 Rev. Civil Docket Continuation

Page 3

DATE	PROCEEDINGS	
Jan. 14-74	Filed Pltff's notice to take deposition of Joint Welfare Fund, International Union of Operating Engineers ret 1/18/74.	
Jan. 25-74	Filed Pltff's Order to Show Cause re; why an order should not issue compelling deft. Local 15 Intl Union of Operating Engineers ret 1/31/74.	
Jan. 25-74	Filed Memorandum of Law in support of Pltff's Motion to compel answer.	
Jan. 25-74	Filed Pltff's Affidvt. by J.F. McHugh in opposition to motion to quash subpoena.	
Jan. 31-74	Filed Memo End. on Order to Show Cause dtd 1/25/74. Referred to Magistrate Hartinstine to hear and determine motion and for all pretrial purposes. So Ordered. TENNEY, J. (mn)	
Feb. 25-74	Filed Pltff's Notice to take deposition of Thomas Maguire.	
Mar. 25-74	Filed Pltff's Notice to Take Deposition of Charles R. Gambino.	
Apr. 23-74	Filed " Affidvt & Notice of Motion substituting the Equal Employment Opportunity Commission, agency of U.S.A as pltff in this action.	
Apr. 23-74	Filed Pltff's Memorandum of Law in support of Motion for Substitution.	
Apr. 30-74	Filed Order with attached Notice of Settlement. Pltff's Motion shall and is granted & Joint Welfare Fund's Motion shall be hereby denied as follows as indicated. TENNEY, J. (mn)	
May 3-74	Filed Stip & Order of Substitution of Atty for Deft. Allied Building Metal Industries, Inc. TENNEY, J.	
May 15-74	Filed Deft. "Local 15" answers to interogs.	
Jun 5-74	Filed Order Pursuant to Rule 25 of FRCP, etc. the Equal Employment Opportunity Commission is substituted as pltff in this action. TENNEY, J. (mn)	
Jun 3-74	PRE-TRIAL CONFERENCE HELD BY TENNEY, J.	
Jul 19-74	Filed Memorandum of Law in opposition to Pltff's motion to compel answers.	
Jul 19-74	Filed Memorandum of Law in support of Motion of Joint Welfare Fund of International Union of Operating Engineers, Local Unions 14, et. to quash subpoena of Pltff.	
9/13/74	FILED IN COURT BY TENNEY, J.	
Oct. 1-74	"	
Oct. 2-74	"	
Oct. 3-74	"	
Oct. 4-74	"	
Oct. 7-74	"	
Oct. 10-74	"	
Oct. 15-74	" and adjourned sine die.	
Nov. 18-74	Filed transcript of record of proceedings, dated 9/13-14-19/74	9/20-24/74
Nov. 18-74	Filed transcript of record of proceedings, dated 9/25-27-30/74	10/1/74
Nov. 18-74	Filed transcript of record of proceedings, dated 10/2-3-4-7-8/74	
Nov. 18-74	Filed transcript of record of proceedings, dated 10/9-10-11/74	

(contd pg 4)

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DATE	PROCEEDINGS	Date Judg
09-30-76	Filed Deft. Local 15 IUOE Notice of Appeal from Final Order and Judgment of 9/1/76. (mailed copy to Robert B. Fiske, Jr.; Doran Collieran, O'Hara, Pollio & Dunne; William W. L. John T. Redmond; James J. A. Gallagher; [redacted] Markle & McCallion; Harold R. Rassen Contracting Plasters Association; Equipment Shop Employers; Rigging Contractors Association & Stone Setting Contractors Association on 10/01/76)	
09-30-76	Filed Deft. Local 14, Intl Union of Operating Engineers motion for stay enforcement of Judgment and order.	
09-30-76	Filed Deft. Local 14, Intl Union of Operating Engineers Motion to intervene, by atty.	
09-30-76	Filed " " " " " " Notice of appeal from Decision. Order and Judgment signed 9/1/76. (mailed copy to U.S. Attys Office on 10/4/76)	

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-v-

LOCAL 14 INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 15 INTERNATIONAL UNION  
OF OPERATING ENGINEERS, THE IRON LEAGUE  
OF NEW YORK CITY, INC., THE CONSTRUCTION  
EQUIPMENT RENTAL ASSOCIATION, GENERAL  
CONTRACTORS ASSOCIATION OF NEW YORK  
CITY, BUILDING CONTRACTORS' AND MASON  
BUILDERS' ASSOCIATION, THE CEMENT  
LEAGUE, STONE SETTING CONTRACTORS'  
ASSOCIATION, ALLIED BUILDING METAL  
INDUSTRIES, RIGGING CONTRACTORS  
ASSOCIATION, CONTRACTING PLASTERERS  
ASSOCIATION, EQUIPMENT SHOP EMPLOYERS,

Defendants.  
-----x

COMPLAINT

72 Civ.

1. This action is brought by the Attorney General on behalf of the United States, seeking relief from violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., and from interference with the implementation of Presidential Executive Order 11246 forbidding racial discrimination in employment by government contractors.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1345 and 42 U.S.C. §2000e-6(b).

3. Local 14, International Union of Operating Engineers (hereinafter "Local 14") is an unincorporated association of approximately 1,600 members which has its principal office at 336 East 15th Street, New York, New



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York, within the Southern District of New York. On information and belief there are few non-white and Spanish surnamed persons in Local 14.

4. Local 14 has collective bargaining agreements with defendants, the Building Contractors and Mason Builders Association, the Cement League, the Stone Setting Contractors' Association, the Allied Building Metal Industries, the Rigging Contractors' Association, the Contracting Plasterers' Association.

5. Local 15, International Union of Operating Engineers (hereinafter "Local 15") is an unincorporated association of approximately 5,650 members. Local 15 has five subdivisions: 15 which has 2,002 members, 267 of whom are non-white or Spanish surnamed; 15A which has 670 members, of whom 87 are non-white or Spanish surnamed; 15B which has 363 members, of whom 47 are non-white or Spanish surnamed; 15C which has 1,340 members, of whom 212 are non-white or Spanish surnamed and 15D which has 1,275 members, of whom 155 are non-white or Spanish surnamed.

6. Subdivisions 15, 15A and 15C are engaged principally in the operation and maintenance of construction equipment in the City of New York.

7. Subdivision 15B represents maintenance people at various race tracks in the City of New York as well as maintenance employees of the Port of New York Authority.

8. Subdivision 15D represents field engineers engaged in surveying activities in the City of New York as

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well as Westchester, Putnam, Dutchess, Nassau and Suffolk Counties of the State of New York.

9. Local 15 has collective bargaining agreements with defendants, The Iron League of New York City Inc., the Construction Equipment Rental Association, General Contractors Association of New York City, Building Contractors' and Mason Builders Association, The Cement League; Stone Setting Contractors Association, Allied Building Metal Industries; Rigging Contractors' Association, Contracting Plasterers' Association, and the Equipment Shop Employers.

10. The defendant contractor associations, The Iron League of New York City Inc., the Construction Equipment Rental Association, General Contractors Association of New York City, Building Contractors and Mason Builders Association, the Cement League, Stone Setting Contractors' Association, Allied Building Metal Industries, Rigging Contractors' Association, Contracting Plasterers Association and the Equipment Shop Employers (hereinafter "Contractors Association"), each transact business in the Southern District of New York.

11. Under the provisions of the Collective Bargaining Agreements described in paragraphs 4 and 9 above, and practices which have developed thereunder, the defendant Local Unions control employment opportunities in the operating engineers' trade within the City of New York and in the Surveyors Trade with the City of New York and the counties of Westchester, Putnam, Dutchess, Nassau and Suffolk within the State of New York.

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12. The union defendants are labor organizations within the meaning of 42 U.S.C. §2000e(d) and are engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e(d).

13. The union defendants are engaged in a pattern and practice of resistance to the full enjoyment by nonwhite and Spanish surnamed workers of rights secured to them by 42 U.S.C. §2000e-2(c) and §2000e-2(d). This pattern or practice of resistance includes, but is not limited to, the following specific acts and practices:

- (a) Failing and refusing to admit non-white and Spanish surnamed workers into the defendant unions as journeymen members on the same basis as whites are admitted;
- (b) Failing and refusing to refer non-white and Spanish surnamed workers for employment within their respective jurisdictions on the same basis as whites are referred by applying standards for referral which have the purpose and effect of insuring referral priority to their members, a substantial number of whom are white;
- (c) Failing and refusing to permit contractors, with whom the defendant unions have collective bargaining agreements, to recruit black and Spanish surnamed workers on the same basis as whites are recruited;



(d) Failing and refusing to permit contractors with whom the defendant unions have collective bargaining agreements to fulfill the affirmative action obligations imposed upon these contractors by Executive Order 11246 by refusing to refer for employment non-white and Spanish surnamed workers whom such contractors wish to employ;

(e) Failing and refusing to take reasonable steps to make known to non-white and Spanish surnamed workers the opportunities for employment in the trades under their jurisdictions, or otherwise to take affirmative action to overcome the effects of past racially discriminatory policies and practices; and

(f) Failing and refusing to file accurate reports with the Equal Employment Opportunity Commission;

(g) Failing and refusing to take reasonable steps to overcome the effects of past racially discriminatory policies and practices.

The pattern or practice of resistance described in this paragraph is of such a nature and is intended to deny the full enjoyment by non-white and Spanish surnamed workers of rights secured to them by 42 U.S.C. 2000e, et seq.

14. The defendant Contractors Associations are joined herein as defendants for purposes of relief according

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to Rule 19a of the Federal Rules of Civil Procedure.

15. The aforementioned acts and practices have operated as a substantial impediment to the employment of non-white and Spanish surnamed workers in the building trade crafts within the jurisdiction of the defendants and have hindered and prevented the fulfillment of affirmative action programs formulated pursuant to Executive Order 11246 and the Regulations promulgated thereunder.

16. The defendants have failed and refused to take all reasonable steps to eliminate the effects of their past discriminatory policies and practices. Unless enjoined by order of this Court, the defendants will continue to engage in patterns and practices which have the effect of denying equal employment opportunities to non-white and Spanish surnamed workers on account of their race and/or national origin.

WHEREFORE, the plaintiff prays that all defendants, their officers, agents, members, employees, successors, and all persons and organizations in active concert or participation with them, be preliminarily and permanently enjoined from engaging in a pattern and practice of discrimination, and all acts and practices which have or may have the effect of depriving non-white and Spanish surnamed workers of employment opportunities equal to those afforded white workers which effect is prohibited by 42 U.S.C. §2000e, et seq., and from engaging in any employment, membership, or referral practice which operates to continue the effects

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of any past racially discriminatory employment, membership, or referral practice, and further that they be preliminarily and permanently enjoined from:

- (1) Failing or refusing to admit non-white and Spanish surnamed workers to journeymen membership on the same basis as whites are admitted or have been so admitted;
- (2) Failing and refusing to establish work referral systems which eliminate the effects of past discrimination by providing non-white and Spanish surnamed workers with employment opportunities equal to those afforded white workers;
- (3) Failing and refusing to recruit non-white and Spanish surnamed candidates for union membership and work referral on the same basis as whites have been recruited in the past;
- (4) Failing and refusing to refer non-white and Spanish surnamed applicants for work on the same basis as white applicants are referred;
- (5) Failing and refusing to take all reasonable steps to overcome the present and continuing effects of their past discriminatory policies and practices, including at least the follow-

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ing affirmative steps:

- (a) Implementation of a program designed to fully inform the minority community about the work and training opportunities available through the facilities of the defendant unions;
- (b) Implementation of training programs, designed to fully train and fully qualify non-white and Spanish surnamed workers who are not yet qualified or who are already partially qualified in their trade;
- (c) Implementation of a non-discriminatory system for the operation of hiring halls maintained by the defendant locals including the setting of fair and impartial standards for referral of workers;
- (d) Establishing procedures whereby the defendants will take all necessary steps to comply with the requirements of Title VII;
- (e) The filing of accurate and complete reports with all government agencies charged with the enforcement of equal employment opportunity laws; and
- (6) Otherwise failing and refusing to take all steps necessary to recruit, hire, employ and

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promote non-white and Spanish surnamed  
workers.

Plaintiff further prays for such other and additional  
relief as the cause of justice may require, together with  
the costs and disbursements in this action.

Dated: New York, New York

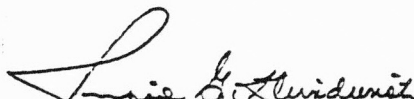
May , 1972

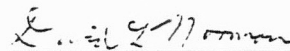
WHITNEY NORTH SEYMOUR, Jr.  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

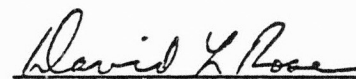
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DAVID L. ROSE  
Attorney  
U.S. Department of Justice  
Washington, D. C. 20530

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

:

Plaintiff,

:

- against -

:

ANSWER

LOCAL 14 INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL 15 INTER-  
NATIONAL UNION OF OPERATING ENGINEERS,  
THE IRON LEAGUE OF NEW YORK CITY, INC.,  
THE CONSTRUCTION EQUIPMENT RENTAL  
ASSOCIATION, GENERAL CONTRACTORS  
ASSOCIATION OF NEW YORK CITY, BUILDING  
CONTRACTORS' AND MASON BUILDERS'  
ASSOCIATION, THE CEMENT LEAGUE, STONE  
SETTING CONTRACTORS' ASSOCIATION, ALLIED  
BUILDING METAL INDUSTRIES, RIGGING  
CONTRACTORS ASSOCIATION, CONTRACTING  
PLASTERERS ASSOCIATION, EQUIPMENT SHOP  
EMPLOYERS,

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72 Civ. 2498 DDB

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Defendants.

-----X

Defendant, International Union of Operating Engineers,  
Local No. 14 (sued herein incorrectly as Local 14 International  
Union of Operating Engineers and hereinafter referred to as  
"Local 14") by its attorneys, Doran, Collieran, O'Hara & Dunne,  
for its answer to the complaint:

1. Denies each and every allegation contained in  
paragraphs "1" and "2", except admits that such action purports  
to seek the relief specified therein and purports to invoke the  
jurisdiction of this Court pursuant to the statutory sections  
specified therein.

2. Admits so much of paragraph "3" as alleges that it  
is an unincorporated association with its principal office

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located at 336 East 15th Street, New York, New York, and denies each and every other allegation contained in such paragraph and begs leave at the time of trial to refer to the records of such Local for the true and correct figures relating to its membership and the minority makeup thereof.

3. Denies each and every allegation contained in paragraph "4", except admits that it has reached tentative agreement for the execution of a collective bargaining agreement with Allied.

4. Upon information and belief, admits so much of paragraph "5" as alleges that Local 15 is an unincorporated association and that such Local has five subdivisions, but denies that it has any knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in such paragraph.

5. Upon information and belief, denies each and every allegation contained in paragraphs "6", "7", "8", and "9", and begs leave at the time of trial to refer to the collective bargaining agreements under which the members of Locals 15, 15A, 15B, 15C and 15D operate for a true and correct statement as to the work that such members are engaged in and the names of the contracting associations with whom such Local has signed agreements with.

6. Upon information and belief, admits the allegations contained in paragraph "10".

7. Denies each and every allegation contained in paragraph "11" in so far as they are alleged to relate to Local 14 and begs leave at the time of trial to refer to the various collective bargaining agreements under which such Local operates for a true and correct interpretation of the territorial jurisdiction of such Local, as well as the nature of the work its members are engaged in within such jurisdiction but denies that it has any knowledge or information sufficient to form a belief as to the truth of such allegations in so far as they may relate to other defendants.

8. Admits the allegations of paragraph "12" in so far as they relate to Local 14, but denies that it has any knowledge or information sufficient to form a belief as to the truth of such allegations in so far as they may relate to other defendants.

9. Denies each and every allegation contained in paragraph "13" in so far as they are alleged to relate to Local 14, but denies that it has any knowledge or information sufficient to form a belief as to the truth of such allegations in so far as they may relate to other defendants.

10. Denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "14".

11. Denies each and every allegation contained in paragraphs "15" and "16" in so far as they are alleged to relate to Local 14, but denies that it has any knowledge or



information sufficient to form a belief as to the truth of such allegations in so far as they may relate to other defendants.

AFFIRMATIVE DEFENSE

12. The complaint fails to state a claim upon which relief can be granted against Local 14.

WHEREFORE, defendant Local 14 demands judgment dismissing the complaint with costs.

DORAN, COLLERAN, O'HARA & DUNNE  
1461 Franklin Avenue  
Garden City, New York 11530  
Tele. No. 516 248-5757  
Attorneys for Defendant Local 14

By: \_\_\_\_\_  
Robert A. Kennedy,  
A Member of the Firm

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

Plaintiff,

-v-

LOCAL 14, INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 15, INTERNATIONAL UNION  
OF OPERATING ENGINEERS, THE IRON LEAGUE  
OF NEW YORK CITY, INC., THE CONSTRUCTION : ANSWER  
EQUIPMENT RENTAL ASSOCIATION, GENERAL  
CONTRACTORS ASSOCIATION OF NEW YORK CITY,  
BUILDING CONTRACTORS' AND MASON BUILDERS' : 72 Civ. 2498  
ASSOCIATION, THE CEMENT LEAGUE, STONE  
SETTING CONTRACTORS' ASSOCIATION, ALLIED  
BUILDING METAL INDUSTRIES, RIGGING :  
CONTRACTORS ASSOCIATION, CONTRACTING  
PLASTERERS ASSOCIATION, EQUIPMENT SHOP  
EMPLOYERS, :

Defendants  
-----X

Defendant, INTERNATIONAL UNION OF OPERATING ENGINEERS.

LOCAL NO. 15 (sued herein incorrectly as LOCAL 15, INTER-  
NATIONAL UNION OF OPERATING ENGINEERS and hereinafter  
referred to as "Local 15") by its Attorneys, CORCORAN and  
BRADY, for its Answer to the Complaint:

1. Denies each and every allegation contained in  
paragraphs "1" and "2" except admits that an action has  
been brought by the Attorney General on behalf of the  
United States of America wherein certain relief is sought  
under the Civil Rights Act of 1964, and that the action  
purports to invoke the jurisdiction of this Court pursuant  
to the statutory sections specified therein.

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U.S. DISTRICT COURT  
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S.D. OF N.Y.

2. Denies information or knowledge sufficient to form a belief as to the allegations contained in Paragraph "3" except admits that Local 14 has an office at 336 East 15th Street, New York, N. Y. within the Southern District of New York.

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "4".

4. Admits so much of Paragraph "5" as alleges that Local 15 has approximately 5,650 members and has five subdivisions, and further admits, upon information and belief, so much of Paragraph "5" as sets forth the approximate numbers of white and non-white or Spanish surnamed members.

5. Denies the allegations contained in Paragraph "6" except admits that Subdivisions 15, 15A and 15C are engaged in the operation and maintenance of certain construction equipment in the City of New York, as set forth in its Charter.

6. Admits the allegations contained in Paragraph "7" and Paragraph "8".

7. Denies each and every allegation contained in Paragraph "9" except admits that tentative agreement has been reached with The General Contractors Association and that LOCAL 15C has Collective Bargaining Agreement with the Defendants the Construction Equipment Rental Association and the Equipment Shop Employers.

8. Upon information and belief admits the allegations contained in Paragraph "10".

9. Denies each and every allegation set forth in Paragraph "11".

10. Admits the allegations set forth in Paragraph "12" insofar as they relate to Local 15, but denies knowledge or information sufficient to form a belief as to the truth of the allegations insofar as they may relate to other Defendants.

11. Denies each and every allegation contained in Paragraph "13" insofar as they relate to Local 15, but denies that it has any knowledge or information sufficient to form a belief as to the truth of such allegations insofar as they relate to other Defendants.

12. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "14".

13. Denies each and every allegation contained in Paragraph "15" and Paragraph "16" insofar as they relate to Local 15, but denies that it has knowledge or information sufficient to form a belief as to the truth of such allegations insofar as they may relate to other Defendants.

AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE

14. The complaint fails to state a claim upon which relief can be granted against LOCAL 15.

AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE

15. The Defendant LOCAL 15 categorically denies the existence of any pattern or practice which directly or indirectly violates the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et. seq. or which interferes with the implementation of Presidential Executive Order 11246; in that since its inception the Defendant LOCAL 15 has had non-white and Spanish surnamed, as well as other minority members in all categories of membership who have actively taken part in the activities of the Local Union and of the International Union of Operating Engineers, and that black members of the Local Union have represented the Union as delegates to Union conventions at International, State and Regional levels, at various locations throughout the United States; in that the Apprentice Training Program of LOCAL 15 has 26 non-white trainees out of a total number of 37 trainees enrolled; in that the LOCAL UNION has cooperated fully as an active participant in the Training Agreement between the New York Building and Construction Industry Board of Urban Affairs Fund and the State of New York and The City of New York, which agreement has for its purpose the establishment of a uniform program of Affirmative Action in accordance with the applicable Federal, State and City Legislation, and the rules, regulations and Executive Orders pertaining thereto, by establishing a Training Program for minority and disadvantaged groups in the crafts and skills of the Building and Construction Industry in New York City and by endeavoring to insure continuity of training

and entrance into the industry as qualified craftsmen for the said minority and disadvantaged groups by providing meaningful training at the Apprentice School as well as on the construction job sites.

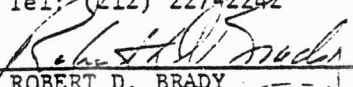
16. The activities and practices of LOCAL 15 as set forth above proves that the general, indefinite and unsupported allegations of the complaint are based upon supposition only, and that the United States Attorney General has no cause or reason to believe that a pattern or practice of denial of rights, as alleged, exists or has ever existed on the part of the Defendant LOCAL 15.

WHEREFORE, Defendant INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 15, demands judgment dismissing the complaint with costs.

Dated: New York, N. Y.  
July 24, 1972

CORCORAN AND BRADY  
Attorneys for Defendant  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL  
NO. 15  
11 Park Place  
New York, N. Y. 10007  
Tel: (212) 227-2242

BY

  
ROBERT D. BRADY  
A Member of the Firm



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA, :  
 :  
Plaintiff, :  
 :  
-against- :  
 :  
LOCAL 14 INTERNATIONAL UNION OF :  
OPERATING ENGINEERS, et al., :  
 :  
Defendants. :  
-----

72 Civ. 2498 D.D.B.

ANSWER

FILED  
U.S. DISTRICT COURT  
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S.D. OF N.Y.

Defendant The General Contractors Association of New  
York, Inc. (sued herein as General Contractors Association of  
New York City), answering the complaint:

1. Denies knowledge or information sufficient to form  
a belief as to the truth of the allegations contained in paragraphs  
1, 2, 4, 12, 14 and 15 of the complaint.

2. Denies knowledge or information sufficient to form a  
belief as to the truth of the allegations contained in paragraph  
3 of the complaint, except admits upon information and belief that  
International Union of Operating Engineers of Local 14 is an unin-  
corporated association with principal offices at 336 East 15th  
Street, New York, New York, within the Southern District of New  
York.

3. Denies knowledge or information sufficient to form a  
belief as to the truth of the allegations contained in paragraph 5  
of the complaint except admits upon information and belief that  
International Union of Operating Engineers, Local 15, is an unin-  
corporated association.

4. Admits upon information and belief the allegations  
contained in paragraphs 6, 7 and 8 of the complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 9 and 10 of the complaint to the extent they refer to the other defendants.

6. Denies each and every allegation contained in paragraph 11 of the complaint except denies knowledge or information sufficient to form a belief as to the truth of so much of said allegation as reads, "\* \* \* and practices which have developed thereunder \* \* \*" and respectfully refers the Court to the respective collective bargaining agreements for a full and complete statement of their contents.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the complaint and all subdivisions thereof except denies each and every allegations contained in subdivisions (c) and (d) thereof to the extent they refer to defendant The General Contractors Association of New York, Inc. and its members-contractors.

8. Denies each and every allegation contained in paragraph 16 of the complaint and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein which pertain to the other defendants.

FOR AN AFFIRMATIVE DEFENSE

9. The complaint fails to state a claim upon which relief can be granted against The General Contractors Association of New York, Inc.



WHEREFORE, defendant The General Contractors Association  
of New York, Inc. demands judgment dismissing the complaint with  
costs.

SHEA GOULD CLIMENKO & KRAMER

By *Barbara L. Ellis*  
Member of the Firm  
Attorneys for Defendant The General  
Contractors Association of New York,  
Inc.  
330 Madison Avenue  
New York, New York 10017  
212-661-3200

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT  
Oct 11 2 29 PM '72  
S.D.N.Y.

-----x  
UNITED STATES OF AMERICA, :  
Plaintiff, : ANSWER  
v. : 72 Civ. 2498  
LOCAL 14, INTERNATIONAL UNION OF :  
OPERATING ENGINEERS, et al., :  
Defendants. :  
-----x

Defendant Allied Building Metal Industries, Inc.  
("Allied"), by its attorneys, Proskauer Rose Goetz &  
Mendelsohn, for its answer to the Complaint herein, alleges  
as follows:

1. Denies the allegations of paragraph 1 of  
the Complaint, except admits that this action was brought  
by the Attorney General on behalf of the United States and  
purports to seek the relief specified in the Complaint.

2. Denies the allegations of paragraph 2 of  
the Complaint, except admits that the Complaint purports  
to invoke the jurisdiction of this Court pursuant to the  
statutory sections specified therein.

3. States that it is without knowledge or  
information sufficient to form a belief as to the truth of  
the allegations of paragraph 3 of the Complaint, except  
admits that Local 14, International Union of Operating

Engineers ("Local 14") maintained its principal office at 336 East 15th Street, New York, New York at the time this action was commenced.

4. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint, except admits that since March 1, 1972 Local 14 has had a collective bargaining agreement with Allied acting for and on behalf of its members.

5. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 9 and 11 of the Complaint except admits that since March 1, 1972 Local 15, International Union of Operating Engineers ("Local 15") has had a collective bargaining agreement with Allied acting for and on behalf of its members.

6. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint, except admits that Allied transacts business in the Southern District of New York.

7. Denies the allegations of paragraph 14 of the Complaint except states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations with respect to the defendant contractor associations other than Allied.

8. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 5, 6, 7, 8, 12, 13 and 15.

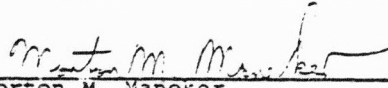
9. Denies the allegations of paragraph 16 of the Complaint, except states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations with respect to defendants other than Allied.

Affirmative Defense

10. The Complaint fails to state a claim upon which relief can be granted against Allied.

WHEREFORE, defendant Allied Building Metal Industries, Inc. demands judgment dismissing the Complaint with costs.

PROSKAUER ROSE GOETZ & MENDELSON  
Attorneys for Defendant Allied  
Building Metal Industries, Inc.

By   
Morton M. Maneker  
A Member of the Firm

300 Park Avenue  
New York, New York 10022

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

PRE-TRIAL  
ORDER

- v -

: 72 Civ. 2498  
(CHT)

LOCAL 14 INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 15 INTERNATIONAL UNION  
OF OPERATING ENGINEERS, THE IRON LEAGUE  
OF NEW YORK CITY, INC., THE CONSTRUCTION  
EQUIPMENT RENTAL ASSOCIATION, GENERAL  
CONTRACTORS ASSOCIATION OF NEW YORK CITY,  
BUILDING CONTRACTORS' AND MASON BUILDERS'  
ASSOCIATION, THE CEMENT LEAGUE, STONE  
SETTING CONTRACTORS' ASSOCIATION, ALLIED  
BUILDING METAL INDUSTRIES, RIGGING CON-  
TRACTORS ASSOCIATION, CONTRACTING  
PLASTERERS ASSOCIATION, and EQUIPMENT  
SHOP EMPLOYERS,

Defendants.

x

On September 9, 1974, the attorneys for the under-  
signed parties herein appeared before the court at a pre-  
trial conference pursuant to Rule 16 of the Federal Rules of  
Civil Procedure, and the following action was taken:

1. The parties agreed that the trial of this ac-  
tion shall be as to liability only and shall be based upon  
the pleading, without amendment thereto, and none of the is-  
sues raised therein is abandoned except for paragraph 13(f)  
of the complaint relating to the filing of accurate reports  
with the Equal Employment Opportunity Commission.

2. The parties agreed that the Equal Employment  
Opportunity Commission is substituted for the United States  
of America as party plaintiff.

3. While reserving the right to add or subtract  
therefrom, plaintiff proposes to introduce into evidence the  
exhibits listed in Attachment A hereto.

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Plaintiff and defendant Local 15 stipulate as to the authenticity of Government's Exhibits 1-4, 8-13, 15-37 and 40-60, and stipulate into evidence Government's Exhibits 5, 6 and 7. As to Exhibits 14, 38 and 39, defendant Local 15 reserves the right to object to the admissibility of all or any part of such exhibits.

Defendant Local 14-14B has stipulated to plaintiff's proposed exhibits numbered "1" through "60" as to their authenticity and admissibility as follows:

As to exhibits numbered "1" through "4", their authenticity is stipulated but not as to their admissibility.

As to exhibits numbered "5" through "7", both their authenticity and admissibility are stipulated to.

As to exhibits numbered "8" through "13", their authenticity is stipulated but not as to their admissibility.

As to exhibits numbered "14" through "34", defendant Local 14-14B reserves the right to object to admissibility of all or any part of such exhibits.

As to exhibits numbered "35" through "37", their authenticity is stipulated but not as to their admissibility.

As to exhibits numbered "38" and "39", defendant Local 14-14B reserves the right to object to admissibility of all or any part of such exhibits.

As to exhibit numbered "40", its authenticity is stipulated but not as to its admissibility.

As to exhibits numbered "41" through "60", defendant Local 14-14B reserves the right to object to admissibility of all or any part of such exhibits.

Reserving the right to add or subtract from this list, defendants propose to introduce into evidence some or all of the following exhibits:

Defendant Local 14-14B's Exhibits

- a. Statistics prepared from Local 14-14B's records relating to minority membership within the union.
- b. Statistics and documents relating to New York City Licensing requirements for Hoisting Machine Operators and application therefor.
- c. Any and all documents which the Union has supplied to the Government and which the Government has failed or refused to offer into evidence.
- d. Union records relating to rates of pay, fringe benefits received by all members of Local 14-14B.

Defendant Local 15's Exhibits

- a. Racial composition of Local 15, Apprentice Training School on a yearly basis.
- b. New York Plan statement of minority trainee goals.
- c. Listing of New York Plan trainees participating through Local 15.

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4. The issue for trial is whether the defendant unions are engaged in a pattern and practice of resistance to the full enjoyment by black and Spanish surnamed workers of the rights guaranteed to them by 42 U.S.C. §2000 e et seq.

5. Plaintiff's contentions are:

a. Locals 14 and 15 of the International Union of Operating Engineers, and their branches, are labor organizations within the meaning of 42 U.S.C. §2000 e(d), and are engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000 e (d) and (e).

b. That the defendant unions are engaged in a pattern and practice of resistance as set forth in paragraph 4 of this pre-trial order, and that the pattern and practice includes the following:

(1) Failing and refusing to admit black and Spanish surnamed workers into the defendant unions as members on the same basis as whites are admitted;

(2) Failing and refusing to refer black and Spanish surnamed workers for employment within their respective jurisdictions on the same basis as whites;

(3) Failing and refusing to train and help train black and Spanish surnamed workers for employment within their respective jurisdictions on the same basis as whites;

(4) Failing and refusing to provide union services and benefits to black and Spanish surnamed workers within their respective jurisdictions on the same basis as for whites;

(5) Failing and refusing to provide equal terms and conditions of employment to black and Spanish surnamed workers within their respective jurisdictions on the same basis as for whites;

(6) Failing and refusing to take reasonable steps to make known to black and Spanish surnamed workers the opportunities for employment in the trades under their jurisdictions, or otherwise to take affirmative action to overcome the effects of past racially discriminatory policies and practices;

(7) Failing and refusing to permit contractors, with whom the defendant unions have collective bargaining agreements, to recruit black and Spanish surnamed workers on the same basis as whites are recruited;

(8) Failing and refusing to permit contractors with whom the defendant unions have collective bargaining agreements to fulfill the affirmative action obligations imposed upon these contractors by Executive Order 11246 by refusing to refer for employment black and Spanish surnamed workers whom such contractors wish to employ;

(9) Discouraging black and Spanish surnamed workers from seeking employment opportunities in the trades within their jurisdiction; and

(10) Failing and refusing to take reasonable steps to overcome the effects of past racially discriminatory policies and practices.

c. Under the provisions of the Collective Bargaining Agreements between the local unions and the employers, and practices which have developed thereunder, the defendant local unions control employment opportunities in the operating engineers' trade within the geographic jurisdiction of the local unions.



d. The aforementioned acts and practices have operated as a substantial impediment to the employment of black and Spanish surnamed workers in the building trade crafts within the jurisdiction of the defendants and have hindered and prevented the fulfillment of affirmative action programs formulated pursuant to Executive Order 11246 and the Regulations promulgated thereunder.

e. The defendants have failed and refused to take all reasonable steps to eliminate the effects of their past discriminatory policies and practices. Unless enjoined by order of this Court, the defendants will continue to engage in patterns and practices which have the effect of denying equal employment opportunities to black and Spanish surnamed workers on account of their race and/or national origin.

f. In order to remedy the effects of the above-described unlawful practices, defendants have been and are under an obligation to take affirmative action to recruit, train, admit to union membership, employ and refer for employment substantial numbers of black and Spanish surnamed workers, in a manner to be determined subsequent to the trial of this action on liability.

g. As a result of the above-described unlawful practices of the defendants, black and Spanish surnamed individuals have suffered financial loss and are, therefore, entitled to receive back pay in amounts to be determined subsequent to the trial of this action.

h. The Iron League of New York City, Inc., the Construction Equipment Rental Association, General Contractors Association of New York, Building Contractors and Mason Builders Association, the Cement League, Stone Setting Contractors Association, Allied Building Metal

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Industries, Rigging Contractors Association, Contracting Plasterers Association and Equipment Shop Employers are associations of contractors engaged in industry affecting commerce within the meaning of 42 U.S.C. § 2000e, which have collecting bargaining agreements with defendant unions, and are properly named as defendants under Rule 19(a)(1), Federal Rules of Civil Procedure.

6. Defendants' contentions are:

Defendant Local 14-14B of the International Union of Operating Engineers claims that it is not in violation of Title VII and contends that:

(a) The charters of Local 14-14B were issued by the International Union of Operating Engineers on March 1, 1937 and December 31, 1938, respectively.

(b) Local 14 is engaged principally in the operation and maintenance of equipment which is used on buildings, heavy construction and tunnel work.

(c) Local 14B was chartered as an organizing local and is engaged principally in the operation and maintenance of equipment in scrap yards, brick yards and in stevedoring operations.

(d) Each member of Local 14-14B regardless of race, color, creed or national origin is accorded the same rights under the Constitution of the International Union of Operating Engineers and By-Laws of Local 14-14B.

(e) The rules for admission to membership in Local 14-14B are set forth in Article 10, Section 1 of the Constitution of the International Union of Operating Engineers and Article IV, Section 1 of the By-Laws of Local 14-14B and apply to all prospective candidates.

(f) Local 14-14B has since 1937 and 1938 had Blacks and Hispanic members.

(g) Since 1937 there has never been an incident where a qualified Black or Spanish surnamed individual or a member of any other minority group has ever been denied membership in Local 14-14B.

(h) Since 1937 no qualified Black or Spanish surnamed individual or other minority group member has ever been denied a transfer into Local 14 from another Local of the International Union of Operating Engineers.

(i) Since 1937 no Black or Spanish surnamed individual or member of any other minority group has ever been expelled from Local 14-14B.

(j) Each and every year since 1940 the Black and other minority membership of Local 14-14B has increased.

(k) Since 1964 no individual regardless of his race, color, creed, religion or place of national origin has brought and sustained a claim of discrimination against any officer or member of Local 14-14B before any body or agency.

(l) All members of Local 14-14B are free to solicit their own jobs from employers, or receive requests from employers for employment or seek assistance from the Locals' Day Room in obtaining employment.

(m) Since 1937 the rates of pay and fringe benefits for Blacks and other minority groups have been the same as those enjoyed by White members.



(n) Since 1937 the opportunities to obtain jobs and/or referrals have been the same for Black and other minority members as those enjoyed by White members.

(o) Since 1964 Local 14-14B has taken part in affirmative action to further assist Blacks and Spanish surnamed individuals and other minorities to become members of Local 14-14B.

Defendant Local 15 of the International Union of Operating Engineers claims that it is not in violation of Title VII and contends that:

(a) Separate charters were issued by the International Union of Operating Engineers to the Local Unions on the following dates:

Local 15 - December 31, 1938  
Local 15A- December 31, 1938  
Local 15B- January 8, 1960  
Local 15C- December 31, 1938  
Local 15D- February 5, 1957

(b) Since the issuance of the said charter, each local has had minority members who gained admission on the same basis as white members.

(c) The number of minority members in the Local Union has increased with the increase in the overall Union membership.

(d) Since its inception, the Local 15 Apprentice Training School has trained black and Spanish surnamed trainees. Every class of trainees has had a greater number of black and Spanish surnamed trainees than white trainees.

(e) Local 15 has cooperated fully in the New York Plan and has exceeded its Plan goal of Minority trainees in every year of participation.

(f) Local 15 International Union of Operating Engineers has not required any restrictive testing procedures, a Union sponsor or the approval of the membership for admission to membership.

(g) There has never been any local or subdivision of Local 15 whose members receive a lower rate of pay for the same work performed at a higher rate of pay by members of another subdivision of Local 15.

(h) The percentage of minority members of Local 15 is and has been substantially higher than other construction unions in the New York area.

(i) Local 15 does not and has not maintained a hiring hall from which contractors must obtain their workers.

(j) Under provisions of the Collective Bargaining Agreements between Local 15 and contributing employers, the employers have the opportunity to hire workers directly without notifying or contacting Local 15 and there has been a consistent pattern of contractors directly hiring workers.

(k) Members of Local 15 consistently obtain their own employment by contacting contractors.

(l) Workers who are not members of Local 15 are referred to employment by Local 15. These non-workers are not required to pay any fee for such referral.

(m) There are no "permits" issued to non-member workers who are referred to employment by Local 15.

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72-1393

(n) Applicants for membership in the Union must be fully qualified to perform skilled work under the jurisdiction of the Local Unions.

(o) Work performed under the jurisdiction of the Local must be performed in a competent and safe manner. Incompetently performed work endangers fellow workers, may cause damage to expensive equipment, and might necessitate the re-doing of costly work.

Defendant, The General Contractors Association of New York, Inc. (hereinafter, "GCA") contends that:

(a) GCA is not an association of contractors engaged in industry affecting commerce within the meaning of 42 USC § 2000 e.

(b) GCA has no collective bargaining agreements with the defendant unions.

(c) GCA is not properly named as a defendant under Rule 19(a), Fed. R. Civ. P.

(d) The action as against GCA should be dismissed in its entirety.

It is stipulated by and between Plaintiff and Defendant, General Contractors Association of New York, Inc., (incorrectly designated herein as General Contractors Association of New York City) that Plaintiff's complaint does not assert any claim for liability against defendant General Contractors Association of New York, Inc.

It is further stipulated by and between Plaintiff and Defendant, General Contractors Association of New York, Inc., that, in the event of any proceeding for the purpose of establishing relief, on the basis of any judgment for liability in the trial herein, that in such a proceeding the General Contractors Association of New York, Inc. shall have a full opportunity to offer proof and defend against the allegations in the Complaint of Plaintiff that (1) the General Contractors Association of New York, Inc. is a proper defendant for purposes of relief under Rule 19(a) of the Federal Rules of Civil Procedure and (2) that the General Contractors Association of New York, Inc. is an association of contractors engaged in any industry affecting commerce within the meaning of 42 USC § 2000e, which has collective bargaining agreements with the defendant unions herein.

7. Plaintiff further proposes that the parties stipulate to the facts listed in Attachment B hereto, in the absence of which plaintiff proposes to prove such facts among others at trial.



8. The parties expect to call the following witnesses at the trial of this action.

A. Plaintiff's Witnesses

While reserving the right to add to or subtract from this list, plaintiff proposes to call some or all of the following witnesses:

1. Union Officers - ✓ Ralph Dalton

Thomas Nolan - *Ex 10 Supplement*

✓ Thomas A. Maguire

✓ Thomas A. Maguire, Jr.

John Messinger

✓ William Wade

✓ Edward Broderick

✓ Edward P. Murphy

John R. Egan

Jesse Martyn

✓ Frank Guma

✓ William Delaney

✓ Charles R. Gambino

Anthony Labate

John E. Wood

2. Joseph Garcia

3. James R. Pettus

4. Francis X. Gray

5. Jake Steele

6. Thomas Mahady

7. Joseph Salcito

8. A number of individuals from the following categories:

SJG:js  
72-1393

- a) Black and Spanish surnamed union members.
- b) Black and Spanish surnamed non-union members employed, seeking employment or having sought employment in New York City in the operating engineers trade.
- c) Persons who have sought employment for Black and Spanish surnamed workers in the operating engineers' trade.

9. Officials from various city agencies.

10. Officials or employees from various federal agencies, including the Department of Defense and the Armed Forces.

11. Representatives of companies employing workers in the operating engineers trade in New York City.

Plaintiff also reserves the right to call additional witnesses at trial to rebut the evidence and testimony introduced by the defendants.

B. Defendant Local 14-14B's Witnesses

While reserving the right to add to or subtract from this list by filing a supplementary list prior to or at trial, defendant Local 14-14B proposes to call some or all of the following witnesses:

1. Nicholas Bonvino
- ✓ 2. Edward Broderick
3. James Brown
4. Charles Castaldo
5. Fitzbert Crawford
6. Alphonso D'Ambroso
- ✓ 7. Ralph Dalton
- ✓ 8. Stanley Drayton
- ✓ 9. William Fulcher
10. William P. Garvin
11. Anthony Gerosa
12. Jacob Grill
13. A. L. Heil
- ✓ 14. Eugene Howard
15. Lester W. Jackson
16. Herman Jetter
- ✓ 17. Herman Lee
18. Jesse J. Martyn
- ✓ 19. John J. Messinger
20. James R. Pettus
21. Joseph M. Rizzuto
22. Merril Smith
23. William D. Wade
24. Jeremiah T. Walsh
- ✓ 25. Solomon Weitz
- ✓ 26. Trevor Wisdom

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Defendant Local 14-14B further reserves the right to call at trial additional witnesses to rebut evidence and testimony of plaintiff.

C. Defendant Local 15's witnesses

Reserving the right to add or subtract from this list, defendant proposes to call some or all of the following witnesses:

1. Union Officers - Thomas A. Maguire  
Thomas P. Maguire, Jr.  
John Murphy  
Thomas Geraghty  
Frank Guma  
Charles R. Gambino  
Anthony Labate  
✓ Daniel Murphy  
William Delaney
- ✓ 2. James J. Dooley
- ✓ 3. Donald Roffles
4. Raul Monagas
- ✓ 5. Earl Johnson
6. Joe N. Davis
- ✓ 7. Selwyn Scarborough
8. Ulysses Stanley
- ✓ 9. Joseph Brown
- ✓ 10. Vivian Palomino
11. Alfred Palomino
12. David Morgan
- ✓ 13. Aston McEwan
- ✓ 14. Keith Watson
15. Jerry Meriwether
16. Raymond Phillips
- ✓ 17. Victor Henry
- ✓ 18. Arthur Smith
19. Ignacio DeLeon
- ✓ 20. Leo Latty

21. Amos Modeste
- ✓ 22. Anthony Young
- ✓ 23. Rufus Brewington
- ✓ 24. William Vance
25. Anthony Sales
26. Noel Gonzalez
27. George Brown
28. Ralph Vasquez
- ✓ 29. Ralph Jones
- ✓ 30. Kenneth Vaughan
- ✓ 31. Stephen Porter
- ✓ 32. Harold James
- ✓ 33. Claudias E. Johnson
34. Johnnie Lewis
35. Enrico Perez
36. James Washington
37. Randolph N. McAlmon
38. Jose Rodriguez
39. Pedro Rivera
40. Harry L. Mayo
41. Charles Thompson, Jr.
42. Horace Wynter
43. Ike King
44. Frank Nunez
45. Anthony Lopez
46. James E. Walton
47. Ralph Johnson
48. Luther Ridley
49. Eddie Gaskin
50. Rogers Morsley
51. John W. Feimster 48



52. James Tidwell
53. Neville R. Lynch
54. Clyde S. Black
55. Joseph Reed
- ✓ 56. John Phillips
57. Waldwin Smith
58. William Mayes
59. Robert C. Rodriguez
60. Robert Young
61. Jesse Council
62. Earl Wallace
63. Jesse Wise
64. Robert Keaton
65. Leroy Debetham
66. George Key
67. Herman G. Alkinson
68. Alfred Gibson
69. Lawrence S. Havens
70. Redus E. Shorter, Jr.
71. Wayman Hall
- ✓ 72. Fitzroy Danvers
73. Nathaniel Brown
74. Antonio Sanchez
75. Eugene Garwood
76. David Mims
77. Joseph Hall
78. Claudius J. Green
79. Bernard Rush
80. James Summerville
81. Samuel Chaneyfield
- ✓ 82. Derrick Danvers

83. Sanders Scott
84. Robert Agnew
85. Ramon DeYubero
86. Paul B. Taylor
87. Audley B. Carter
88. Horace Graham
89. Joseph Leon
90. Andre Procope
91. Matt A. Murray
92. Richard McClain
93. Raul Monagas
94. Manuel H. Sepulveda
95. Gordon L. Flagg
96. Nelson Baez
97. Hector DeVega
98. Charles Alvarez
99. Donald Marshall
100. Humberto Castro
101. Robert Brown
102. Wilson Carcana
103. Curtis English
104. Juan Galarce-Ortiz
105. Pablo Hidalgo
106. Delroy O. Welsh
107. Jimmy Rowser
108. Cleveland Smith
109. Manuel Zamora
110. Anthony B. Renne
111. Gonzalo E. Gonzalez
112. Leon C. Guerra
113. Adriano P. Lott

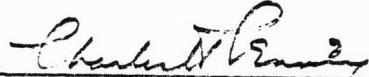
114. Raymond G. Carle

115. Daniel Rios

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Dated: New York, New York  
September 19, 1974.

SO ORDERED:

  
United States District Judge

CONSENTED TO:

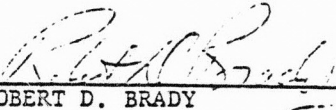
PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the Plaintiff

By:   
MICHAEL S. DEVORKIN  
Assistant United States Attorney

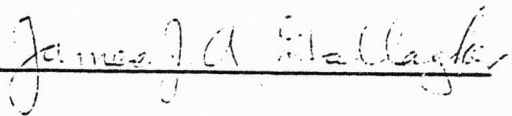
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SHEA GOULD CLIMENKO & KRAMER  
Attorneys for Defendant, General Contractors Association

By: 

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72-2084  
D-31-10

ATTACHMENT A

PLAINTIFF'S EXHIBITS

- ✓ 1. U.S. Department of Commerce, General Social and Economic Characteristics, 1970 Census Population -- New York, (PC(1) -34 N.Y.), Tables 119, 120, 121, 125, 126, 130, 131; Appendix B at 5-7, 15-17.
- ✓ 2. U.S. Department of Commerce, 1970 Census of Population, Occupation by Industry, (PC(2) -7C), Table 3.
- ✓ 3. U.S. Department of Commerce, 1970 Census of Population and Housing, Estimates of Coverage of Population by Sex, Race and age; Demographic Analysis, PHC(E)-4.
4. U.S. Department of Labor, Geographic Profile of Employment and Unemployment, 1973 (Report #31).
- ✓ 5. Constitution, International Union of Operating Engineers, as amended -
  - ✓ A. April, 1960
  - ✓ B. April, 1964
  - ✓ C. April, 1968
  - ✓ D. April, 1972
- ✓ 6. Bv-Laws, International Union of Operating Engineers, Local 14 & 14-B, approved March 11, 1947, as amended-
  - ✓ A. September 14, 1956
  - ✓ B. February 27, 1961
  - ✓ C. March 9, 1965
  - ✓ D. February 12, 1970



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- ✓ 7. By-Laws, International Union of Operating Engineers,  
Locals 15, 15A, 15B, 15C, 15D,
8. Minutes, Executive Board Meetings, Local 14 and 14B,  
January 1964 - to date.
9. Minutes, Investigating and Examining Committee  
Meetings, Local 14 & 14B, January, 1964, to date.
- ✓ 10. Minutes Regular and Quarterly Membership Meetings,  
Local 14 & 14B, January 1964, to date.
- ✓ 11. Minutes, Regular Monthly and Quarterly Membership  
Meetings and Executive Board Meetings, Locals 15 &  
15A, 15B, 15C, 15D, January 2, 1966, to date.
12. Applications for Membership to Local 14.
- ✓ 13. Transcript of Hearings, New York City Commission  
on Human Rights
- ✓ A. August 14, 1963, at 102-159.
- ✓ B. November 16, 1966, at 681-814.
14. General Contractors Association of New York, Inc.  
("GCA") answers to Plaintiff's Interrogatory  
No. 9.
15. Deposition of Ralph Dalton, March 8, 1974.
- ✓ 16. Deposition of Thomas Nolan, March 6, 1974.
17. Deposition of Thomas A. Maguire, November 20, 1973.
18. Deposition of Thomas A. Maguire, Jr., March 7, 1974.
19. Deposition of John Messinger, September 6, 1973.
20. Deposition of William Wade, September 6, 1973.
21. Deposition of Edward Broderick, September 5, 1973
22. Deposition of Edward P. Murphy, March 6, 1974.
23. Deposition of John R. Egan, July 28, 1972.

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24. Deposition of Jesse Martyn, April 11, 1973.
25. Deposition of Frank Guma, March 5, 1974.
26. Deposition of William Delaney, March 5, 1974.
27. Deposition of Charles R. Gambino, March 7, 1974.
28. Deposition of Anthony Labate, March 5, 1974.
29. Deposition of John E. Wood, May 29, 1973.
30. Deposition of Joseph Garcia, April 9, 1973.
31. Deposition of James R. Pettus, April 9, 1973.
32. Deposition of Francis X. Gray, March 29, 1973.
33. Deposition of Jake Steele, March 29, 1973.
34. Deposition of Thomas Mahady, March 29, 1973.
- ✓ 35. Letter of James R. Dillion to New York City Commission on Human Rights, dated March 14, 1967.
- ✓ 36. Letter of Thomas A. Maguire to New York City Commission on Human Rights, dated March 13, 1967.
- ✓ 37. Letter of Ralph Dalton to Madison Jones, Executive Director, New York City Commission on Human Rights, dated April 21, 1965.
- ✓ 38. Government's Interrogatories 6, 7, 17 to Local 15 and Local 15's answers thereto.
- ✓ 39. Government's Interrogatories 6, 7, 17 to Local 14 and Local 14's answers thereto.
40. Collective Bargaining Agreement between Members of The General Contractors Association of New York, Inc. and Locals 14, 15 & 15A.
  - ✓ A. July 1, 1957 - June 30, 1960
  - ✓ B. July 1, 1960 - June 30, 1963
  - ✓ C. July 1, 1963 - June 30, 1966
  - D. July 1, 1966 - June 30, 1969
  - ✓ E. July 1, 1969 - June 30, 1972

F.

- ✓ 41. Collective Bargaining Agreement between Members of the Building Contractors' and Mason Builders' Association, the Cement League, Stone Setting Contractors' Associations, Rigging Contractors' Association, Building Contractors Employers Association and Local 15 & 15A.
  - ✓ A. July 1, 1969 - June 30, 1972
  - B.
- ✓ 42. Collective Bargaining Agreement between Allied Building Metal Industries, Inc. and Local 14 & 15.
  - ✓ A. March 1, 1972 - June 30, 1972
  - B.
- 43. Collective Bargaining Agreement between Allied Building Metal Industries, Inc. and Local 15 & 15A
  - A. March 1, 1972 - June 30, 1972
  - B.
- ✓ 44. Collective Bargaining Agreement between Iron League of New York, Inc. and Local 14 & 15.
  - ✓ A. October 4, 1966 - June 30, 1969
  - B.
  - ✓ C. July 1, 1972 - June 30, 1975
- ✓ 45. Collective Bargaining Agreement between Building Contractors and Mason Builders' Association. The Cement League, Stone Setting Contractors Association, Rigging Contractors' Association, Contracting Plasterers' Association, Metropolitan Building Contractors Associations, and Local 14

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- ✓ A. July 1, 1960 - June 30, 1963
- / B. July 1, 1963 - June 30, 1966
- ✓ C. July 1, 1966 - June 30, 1969
- ✓ 46. Collective Bargaining Agreement between Building Contractors and Mason Builders' Association, The Cement League, Contracting Plasterers' Association of Greater New York, Contracting Stonesetters Association, Inc., Allied Building Metal Industries, Inc., and Local 14, August 16, 1972 - June 30, 1975.
- ✓ 47. Collective Bargaining Agreement between Associated Brick Mason Contractors of Greater New York and Local 14, July 1, 1972 - June 30, 1975.
- ✓ 48. Collective Bargaining Agreement between N.Y. Racing Association, Inc. and Local 15B.
  - ✓ A. February 1, 1966 - January 31, 1969
  - ✓ B. March 1, 1972 - March 1, 1973
  - ✓ C.
- ✓ 49. Collective Bargaining Agreement between Members of General Contractors Association of New York and Local 15 C.
  - ✓ A. October 9, 1957 - October 8, 1960
  - ✓ B. October 9, 1960 - October 8, 1963
  - / C. October 9, 1966 - October 8, 1969.
- ✓ 50. Collective Bargaining Agreement between Equipment Shop Employers and Local 15C
  - ✓ A. October 9, 1966 - October 8, 1969
  - B.
- ✓ 51. Collective Bargaining Agreement Between Construction Equipment Rental Association and Local 15 C



- ✓ A. October 9, 1960 - October 8, 1963
- ✓ B. October 9, 1963 - October 8, 1966
- ✓ C. October 9, 1966 - October 8, 1969
- ✓ D. October 9, 1969 - October 8, 1972

E.

- ✓ 52. Collective Bargaining Agreement between General Contractors Association of New York City and Local 15D

- ✓ A. March 30, 1961 - June 30, 1963
- ✓ B. July 1, 1963 - June 30, 1966
- ✓ C. July 1, 1966 - June 30, 1969
- ✓ D. July 1, 1969 - June 30, 1972

E.

- 53. Collective Bargaining Agreement between Members of the Cement League, Building Contractors and Mason Builders Assoc. and Metropolitan Building Contractors Assoc. and Local 15D

- ✓ A. July 1, 1966 - June 30, 1969

B.

- 54. Collective Bargaining Agreement between Members of the General Contractors Association of New York City and Local 15D

- A. March 30, 1961 - June 30, 1963
- B. June 30, 1963 - June 30, 1966
- C. Addendum to Agreement dated July 1, 1963
- D. June 30, 1966 - June 30, 1969
- E. Amendment dated May 19, 1967
- F. July 1, 1969 - June 30, 1972
- G.



- 55. Collective Bargaining Agreement between Members of the Cement League, Building Contractors and Mason Builders Association and Metropolitan Building Contractors Association and Local 15D.
  - A. June 1, 1966 - June 30, 1969
  - B.
- ✓ 56. Collective Bargaining Agreement between the Cement League and Local 15D
  - ✓ A. October 11, 1961 - June 30, 1966
  - B.
- ✓ 57. Collective Bargaining Agreement between the Building Contractors Employers Association, Inc. and Local 15D
  - ✓ A. July 1, 1969 - June 30, 1972
  - B.
- ✓ 58. Collective Bargaining Agreement between the Cement League and the Building Contractors' and Mason Builders' Association of Greater New York and Local 15D
  - ✓ A. July 1, 1969 - June 30, 1972
  - B.
- ✓ 59. Collective Bargaining Agreement between Members of the Cement League, Building Contractors and Mason Builders Association, and Metropolitan Building Contractors Association, affiliated with the Building Trades Employers' Association of the City of New York and Local 15D

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✓ A. July 1, 1966 - June 30, 1969

B.

✓ 60. Collective Bargaining Agreement between Members of  
the Cement League, affiliated with the Building  
Trades Employers' Association of the City of New  
York and Local 15D.

A. Addendum to Agreement dated October 11, 1961

✓ B. June 30, 1963 - June 30, 1966

C.

ATTACHMENT B

Government's Proposed  
Stipulation of Facts

1. The territorial jurisdiction of Locals 14 and 15, and their branches, includes the five boroughs of the City of New York. The jurisdiction of branch 15D further includes Westchester and Putnam Counties and that part of Dutchess County lying south of the northern city line of the city of Poughkeepsie as well as Nassau and Suffolk counties.

2. Locals 14 and 15, and their branches, are all governed by the same Constitution of the International Union of Operating Engineers.

3. Locals 14 and 15, are engaged principally in the operation and maintenance of equipment on building and heavy construction.

4. Local 14's trade jurisdiction includes principally operation and maintenance of larger construction equipment than that under the jurisdiction of Local 15, as well as long boom cranes which require a license to operate from the City of New York.

5. Local 15 has the following branches:

a) 15 and 15A cover persons operating equipment and outside maintenance engineers;

b) 15B covers persons doing maintenance work at the Port Authority of New York and various race tracks in New York City;

c) 15C covers maintenance engineers in inside shops;

d) 15D covers field engineers engaged in surveying activities.



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6. Local 14 has the following branches:

a) 14 covers operating engineers on equipment on public construction sites who are required to have a city crane license:

b) 14B covers operating engineers on equipment used in scrapyards on private property, who are not required to have a city crane license.

7. Locals 14 and 15 in New York, are the only locals involved in building and heavy construction in the United States under the Constitution of the International Union of Operating Engineers, which have separate charters within the same local geographic jurisdiction of the International Union of Operating Engineers.

8. Neither Local 14 nor Local 15 has formal apprenticeship programs.

9. Most operating engineers learn the trade through on the job training.

10. For the admission of journeymen to Local 14, Local 14 has relied to a large extent on members of Local 15 who receive on the job training in maintenance and operation of Local 14 equipment.

11. In December of 1971, Local 15 instituted a training program operated at facilities near John F. Kennedy International Airport. Local 14 has not participated in any similar training program, but has recently instituted a re-training program for members of Local 14.

12. The approximate membership of Local 15 has grown from 3,094 on January 1, 1950 to 5,661 on January 1, 1972 as follows:

January 1, 1960	3,094
January 1, 1964	4,584
January 1, 1965	4,680
January 1, 1966	4,772



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January 1, 1967	4,740
January 1, 1968	4,984
January 1, 1969	5,153
January 1, 1970	5,252
January 1, 1971	5,494
January 1, 1972	5,661

13. The approximate membership of Local 14 has remained in the range of 1500 to 1600 members since its inception as follows:

1940	1,680 members
1950	1,327 members
1960	1,576 members
1961	1,614 members
1962	1,662 members
1963	1,675 members
1964	1,645 members
1965	1,512 members
1966	1,561 members
1967	1,500 members
1968 and 1969	1,500 members
1970	1,600 members
1971	1,557 members
1972	1,553 members

14. Members of Local 14 generally receive a higher rate of compensation than members of Local 15.

15. Membership Rules for admission to Local 15 are set forth in Article 10, Section 1 of the Constitution of the International Union of Operating Engineers, and Article IV of the By-Laws of Local 15.

16. The procedures for admission to Local 15 are set forth in Article 23 of the Constitution of the International Union of Operating Engineers and admissions are subject to review by the Local 15 Executive Committee. No license is required for membership in Local 15.

17. The only piece of equipment operated by some Local 15 members which requires a license is a cherry picker crane. Certifications are also required for welders on certain jobs.

18. Membership rules for Local 14 are set forth in Article 10, Section 1 of the Constitution of International



Union of Operating Engineers and Article 4, Section 1 of the By-Laws of Local 14 and 14B. Article 4, Section 1 of the By-Laws requires that candidates for membership in Local 14 shall be licensed by the City of New York and shall have at least a minimum of 200 days experience on heavy equipment and perform satisfactorily on two or more specified pieces of equipment.

19. Procedures for admission to Local 14 are set forth in Article 23, subdivision 6 of the Constitution of the International Union of Operating Engineers, which requires clearance with a Local 14 Examining and Investigating Committee and a Local 14 Executive Board.

20. All past and present officers, business representatives and members of the Investigating and Examining Committee and Executive Board of Local 14 are white.

21. The past and present Presidents, Vice-Presidents, Business Managers, all past and present business agents and all past and present members of the Executive Board of Local 15 are white. Local 15 presently has 1 black auditor and 1 black trustee, and previously had a black auditor who is now deceased.

22. The rate of admission to Local 14 is regulated by the Local. Applications for membership which are on file may be processed when there are increased demands for engineers in the trade. Such demand is determined by the general membership and, if an applicant's name is submitted, the general membership decides whether such applicant should be forwarded to the examining committee.

23. Locals 14 and 15 refer men to work through a hall formally referred to as a "day room," although members are free to seek employment on their own through information received by word of mouth from the union, union members, or the employers.

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24. Under the various collective bargaining agreements between Locals 14 and 15 and the various contractor associations, the employers recognize the union as the source for the procurement of personnel and agree to employ such workers who are members in good standing in the union or who become members thereof 7 days after the commencement of their employment, and the Union agrees to furnish such workers when requested by the employers.

25. The approximate Black and Spanish surnamed proportion of the male labor force with high school education or less available for employment in this industry, in New York City is 35%, and the approximate minority proportion of the male labor force in New York City is 30%.

26. Local 14 currently has 1550 members, of whom 44 are known to the union to be Black or Spanish surnamed, as follows

	<u>Members</u>	<u>Black or Spanish Surnamed</u>
14	1445	24
14B	85	20

27. Local 15 currently has 6362 members, of whom 407 are known to the union to be Black or Spanish surnamed, as follows

	<u>Members</u>	<u>Black or Spanish Surnamed</u>
15	2411	107
15A	702	113
15B	320	46
15C	1411	60
15D	1318	70

Of these minorities, 188 have been admitted since this law-suit was filed, as follows

15	-	27
15A	-	70
15B	-	4
15C	-	13
15D	-	11

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28. From 1960 to June, 1972, Local 15 has admitted new members who have either had no prior union membership or have transferred from another local union or from one branch of Local 15 to another, as follows:

Yearly Admissions into Local 15	Total	New	Total Transfers	Transfers from:				Other Locals
				15A	15B	15C	15D	
1966								
Branch 15	2		2			1		1
15A	18	5	13			10		3
15B								
15C	30	29	1					1
15D								
Total	50	34	16			11		5
1967								
Branch 15	10		10			10		
15A	3	1	2			1		1
15B			.					
15C	45	44	1					1
15D								
Total	58	45	13			11		2
1968								
Branch 15	25	2	23			22		1
15A	42	41	1					1
15B								
15C	74	73	1					1
15D								
Total	141	116	25			22		3



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10. From 1968 to August, 1972, Local 14 has admitted new members who have either had no prior union membership or have transferred from another local union or from another branch of Local 14, as follows:

Yearly  
Admission  
from  
Local  
14

Year	Total	New	Total Trans- fers	Transfers from:						Other Locals
				14B	11	15A	15B	15C	15D	
1968										
14	46	21	25		3	10		5		7
14B	1	1								
Total	47	22	25		3	10		5		7
1969										
14	54	12	41	6	30					5
14B	7	2	5		3	1				1
*Total	61	14	46	6	33	1				6
1970										
14	67	15	52	6	33	3		3	2	5
14B	6	6	2					1		1
Total	73	21	54	6	33	3		4	2	6
1971										
14	70	22	56	7	15	8		2		4
14B	6	1								
Total	76	23	56	7	15	8		2		4
1972										
14	61	9	23	1	15			1	1	5
14B	1	2	2		1					
Total	62	11	25	1	16			1	1	5

94 additional applicants were reinstated, 3 in Branch 14 and 1 in Branch 14B.

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Yearly Admissions into Local LF	Total	Net	Total Transfers	Transfers from:				Other Locals
				15A	15B	15C	15D	
1969								
Branch 15	26	1	25			22	1	2
15A	59	41	18			17		1
15B								
15C	82	79	3				1	2
15D								
Total	167	121	46			39	2	5
1970								
Branch 15	9		9			5		4
15A	129	111	18			13	1	4
15B								
15C	101	100	1					1
15D								
Total	239	211	28			18	1	9
1971								
Branch 15	54	6	58			50	1	7
15A	124	110	14			6		
15B								
15C	60	59	1					1
15D								
Total	240	183	57			56	1	8



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Yearly Admissions Into Local 15				Transfers from:				Other Locals
	Total	New	Total Transfers	15A	15B	15C	15D	
1978 (Jan. through June)								
Branch 15	12	3	9			8		1
15A	23	22	1					1
15B								
15C	10	10						
15D								
Total	45	35	10			8		2

SOUTHERN DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, :

Plaintiff, : 72 Civ. 2498 (CHT)

-against- :

LOCAL 14 INTERNATIONAL UNION OF OPERATING :  
ENGINEERS, LOCAL 15 INTERNATIONAL UNION :  
OF OPERATING ENGINEERS, THE IRON LEAGUE :  
OF NEW YORK CITY, INC., THE CONSTRUCTION :  
EQUIPMENT RENTAL ASSOCIATION, GENERAL :  
CONTRACTORS ASSOCIATION OF NEW YORK CITY, :  
BUILDING CONTRACTORS' AND MASON BUILDERS' :  
ASSOCIATION, THE CEMENT LEAGUE, STONE :  
SETTING CONTRACTORS' ASSOCIATION, ALLIED :  
BUILDING METAL INDUSTRIES, RIGGING CON- :  
TRACTORS ASSOCIATION, CONTRACTING PLAS- :  
TERERS ASSOCIATION, and EQUIPMENT SHOP :  
EMPLOYERS, :

Defendants. :  
-----X

FILED  
MAY 15 10 42 AM '76  
CLERK OF COURT  
SOUTHERN DISTRICT OF NEW YORK  
OPINION

APPEARANCES

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PETER STERGOS, ESQ.



FACTS.

This is an action presently brought by the Equal Employment Opportunity Commission ("EEOC") in a complaint signed by the Attorney General of the United States in May 1972 under the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., pursuant to authority granted to the Attorney General in that Act, Act of 1964, 42 U.S.C. § 2000e-6(a), <sup>1/</sup> and filed herein on June 13, 1972. This Court has jurisdiction pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 2000e-6(b).

The defendants are local unions or divisions of such unions engaged principally in the operation and maintenance of construction equipment, and contractors' associations with whom such unions or divisions thereof have collective bargaining agreements all, with minor exceptions, within the Southern District of New York. The action was tried to the Court solely as to liability. Accordingly, with the exception of a brief appearance by defendant General Contractors Association of New York, no defendant contractors' association was represented at the trial of the limited issue of liability.

#### THE COMPLAINT

The complaint alleges that Locals 14 and 15 of the International Union of Operating Engineers (hereinafter Locals 14 and 15) including the former's affiliate Local 14B and the latter's

... and ...  
... and ... are engaged in a ... and ... of ...  
... to ... employment of non-white and Spanish surnamed  
workers of rights secured in them by 41 I.R.C. § 2000e-2(a)  
and § 2000e-2(c). This pattern of practice of resistance is  
alleged to include, but is not limited to, the following  
specific acts and practices:

(a) Failing and refusing to admit non-white and Spanish surnamed workers into the defendant unions as journeyman members on the same basis as whites are admitted;

(b) Failing and refusing to refer non-white and Spanish surnamed workers for employment within their respective jurisdictions on the same basis as whites are referred by applying standards for referral which have the purpose and effect of insuring referral priority to their members, a substantial number of whom are white;

(c) Failing and refusing to permit contractors, with whom the defendant unions have collective bargaining agreements, to recruit black and Spanish surnamed workers on the same basis as whites are recruited;

(d) Failing and refusing to permit contractors with whom the defendant unions have collective bargaining agreements to fulfill the affirmative action obligations imposed upon these contractors by Executive Order 11246 by refusing to refer for employment non-white and Spanish surnamed workers whom such contractors wish to employ;

(e) Failing and refusing to take reasonable steps to make known to non-white and Spanish surnamed workers the opportunities for employment in the trades under their jurisdictions, or otherwise to take affirmative action to overcome the effects of past racially discriminatory policies and practices; and

(f) Failing and refusing to file accurate reports with the Equal Employment Opportunity Commission;



(g) Failing and refusing to take reasonable steps to overcome the effects of past racially discriminatory policies and practices." (Complaint ¶ 13).2/

It is charged that Local 14 has approximately 1,600 members and that "there are few non-white and Spanish surnamed persons in [that membership]." (Complaint ¶ 3). It is further charged that Local 15 and its subdivisions have approximately 5,650 members, the composition of which is as follows: Local 15 has 2,002 members, of whom 267 are nonwhite or Spanish surnamed; Local 15A has 670 members, of whom 87 are nonwhite or Spanish surnamed; Local 15B has 363 members, of whom 47 are nonwhite or Spanish surnamed; Local 15C has 1,340 members, of whom 212 are nonwhite or Spanish surnamed; and Local 15D has 1,275 members, of whom 155 are nonwhite or Spanish surnamed. (Complaint ¶ 5).

It is charged that Local 14 has collective bargaining agreements with defendants Building Contractors' and Mason Builders' Association, the Cement League, the Stone Setting Contractors' Association, the Allied Building Metal Industries, the Rigging Contractors Association, and the Contracting Plasterers' Association; that Local 15 has collective bargaining agreements with defendants The Iron League of New York City, Inc., the Construction Equipment Rental Association, the General Contractors Association of New York City,<sup>3/</sup> the Building Contractors' and Mason Builders' Association, the Cement League,

the Stone Setting Contractors' Association, the Allied Building Metal Industries, the Rigging Contractors' Association, the Contracting Plasterers' Association, and the Equipment Shop Employers, and that under the provisions of these collective bargaining agreements and the practices developed thereunder, Locals 14 and 15 control employment opportunities in the operating engineers' trade within the City of New York and in the surveyors' trade within the City of New York and the counties of Westchester, Putnam, Dutchess, Nassau and Suffolk within the State of New York. (Complaint ¶¶ 4, 9 and 11). The defendants with whom Locals 14 and 15 have collective bargaining agreements are hereinafter referred to as the "contractors' associations".

The complaint seeks injunctive relief against the alleged discriminatory practices.

#### FINDINGS OF FACT

##### Background of Locals 14 and 15

(1) Locals 14 and 15 are chartered locals of the International Union of Operating Engineers ("IUOE") and are governed by the same International Constitution. (Pre-Trial Order at 7, ¶ 6(a); at 9, ¶ (a) (hereinafter "PTO"); Tr. 27, 48). The trade jurisdiction of Local 14 includes both building work and heavy construction work. Heavy construction work includes digging foundations for buildings, driving piles on those foundations,

and building docks, bridges, sewers, tunnels and roads. The building work includes most hoisting equipment although hoisting work occurs in other areas, e.g., tunnel and bridge work.

(2) Local 14B is not, strictly speaking, a "branch" or "division" of Local 14 since it was issued its own charter from the IUOE as an organizing local on December 31, 1938 (PTO at 7, ¶ 6(a)). The trade jurisdiction of Local 14B includes the operation of hoisting equipment in private scrapyards and brickyards, some well-digging work, and stevedoring operations on the waterfront of New York. (Tr. 388, 484-85).

(3) Local 15's trade or work jurisdiction primarily consists of the operation and maintenance of equipment for building and heavy construction sites, and related work, including welding and surveying. (Tr. 20-22). It is one Union with five branches which operate under the direction and control of the parent Local Union, and are governed by a single set of by-laws and officers. The membership of Locals 15 and 15A includes operating engineers, maintenance engineers, and welders on heavy construction and building sites, as well as relatively unskilled oilers, helpers, general maintenance personnel or skilled mechanics who do not operate heavy equipment machinery. Local 15B covers persons doing maintenance work at the Port Authority of New York and various racetracks in New



York State. Local 15C covers maintenance engineers for construction equipment who work in indoor repair shops run either by equipment dealers or construction contractors, and who range from unskilled helpers to grade A and B engineers. Local 15D covers field engineers engaged in surveying work on heavy construction or building sites. The surveyor categories include the relatively unskilled rod man, the transit man and the chief of party. (Tr. 22-24, 345-46, 356-57; Pl. Ex. 7 (hereinafter "PX")).<sup>4/</sup>

(4) The geographic jurisdiction of Locals 14 and 15 is New York City,<sup>5/</sup> and they are the only operating engineer locals in the country which are chartered with the same geographic jurisdiction.<sup>6/</sup>

(5) Despite the contentions of the EEOC, Local 14 has never recognized Local 15 as its apprentice local or had apprentice jurisdiction of the latter,<sup>7/</sup> although the latter has apprentice jurisdiction and furnishes a substantial number of new members for Local 14, i.e., 50%. (Tr. 425, 516-17; EX 13A, at 153, 738; PTO Attachment B, ¶ 29). There is no provision for the "automatic" transfer of Local 15 members into Local 14, and a member of Local 15 seeking to transfer from Local 15 to Local 14 must go through the same admission procedures as any applicant seeking admission.

(6) Local 15 is an amalgamation of Locals 130A, 125A and 134A which covered apprentices, junior engineers (helpers and oilers) and some operating engineers on all building and heavy construction equipment in New York City, while Local 14 is an amalgamation of the parent locals 130, 125, 184 and 403 which covered most of the operators of such equipment. (Tr. 43-47, 51-53, 382, 508-10, and 516). To become an operator in one of Local 14's predecessors, one had to serve first as an apprentice in one of Local 15's predecessors. However, when the amalgamation took place in 1937, Local 15 did not want to be primarily an apprentice union, and therefore it was given jurisdiction over some equipment operators also. As a result of these amalgamations, the IUOE, in issuing the charters in 1937, assigned Local 14 responsibility for large hoisting equipment, certain small hoisting and construction equipment operated above the ground level, and certain large construction equipment used at the ground level or underground. Local 15 was assigned responsibility for most heavy construction equipment, including the smaller versions of some Local 14 machinery, and smaller hoisting equipment.

(7) The type of equipment utilized by Local 14 men includes hoisting equipment such as cranes and derricks, as well as pile drivers, drag lines, power shovels, backhoes, graders, rollers, miners, compressors, well drilling inclines and weld-



ing machines. (PX 40-E, at 15-18).

(8) The type of equipment utilized by Local 15 men includes cherrypickers, loaders, scrapers, graders, bulldozers, tractors, power shovels, fork lifts, and mixers. (PX 40-E, at 18-22).

(9) Although some of the equipment utilized by Local 15 is comparable to equipment utilized by Local 14, the equipment utilized by Local 14 is generally larger, or utilized in a different area.<sup>8/</sup> Local 15 does not have jurisdiction to operate cranes. Its members do operate "cherrypickers", which require a New York City license, but not for the same operations as the cranes under Local 14's jurisdiction.

(10) The City of New York requires the operators of certain Local 14 and Local 15 equipment to be licensed by the City. Most of the welders for Local 15 must be certified (Tr. 20-21, 330) and members of Local 15 who operate cherrypickers must hold Class "C" New York City licenses. Operators of large hoist machinery must have a New York City Type "A" or "B" hoist machine operators' license. The actual requirements are specified in Local Law No. 73. (PX 112, at 2).

The first requirement for admission to Local 14 is, and has been, that all applicants be licensed engineers in accord with the laws of the City of New York. (PX 6A, at 5;

PK 6B, at 7; PK 6C, at 9; PK 6D, at 9; PK 6B; PK 112; Tr. 427, 437, 512, 623, 1775, 1812, 1841, 1869 and 3840).<sup>9/</sup> Although certain equipment operated by Local 14 is specifically exempt from the licensing requirement, i.e., front-end loaders, scrapers, backhoes, power shovels, gradalls, tunnel mucking machines, back-filling machines, compressors, wellpoint pumps, concrete mixing machines, welding machines, spreaders, locomotives, rollers and drag lines (Tr. 3832-33), on any particular project 75 to 95 percent of the equipment under Local 14's designated craft jurisdiction must, when operated within the City of New York, be under the control of an operator licensed by the City. (Tr. 500, 585-86, 1825-26 and 3833).<sup>10/</sup> Moreover, although Local 14 operates equipment not requiring a license, its collective bargaining agreements give the employer the right to shift a man from one piece of equipment to another irrespective of whether such piece of equipment requires a license to operate.

(11) Examinations for the "Hoisting Machine Operator" are administered semi-annually by the Department of Personnel of the City of New York. (Tr. 431, 1941, 1954). The examination consists of two parts, a written examination of seventy questions and a practical operational examination on a crane, compressor, bulldozer or front-end loader. (Tr. 1941, 1953-55). To be eligible to file an application to take the exami-

nation, an applicant must be at least 21 years of age, able to read and write the English language, and have at least two years experience as an oiler or as an assistant to an operator on cranes, derricks or cable-ways. (Defts. Ex. B (hereinafter DX)).

(12) In addition to the license requirement for admission to membership in Local 14, an applicant ordinarily will not be granted admission unless he has 200 days of work experience on heavy equipment and satisfactory performance on two or more pieces of such heavy equipment, e.g., power shovels, drag-lines, backhoes, clamshells, pile-drivers, cranes and double drum derricks (PX 6D), although he may be referred out to work as a permitman. (Tr. 449-52, 459, 557). Also, in order to become a member of Local 14 an applicant who has no prior affiliation with any operating engineers' local must have two members of Local 14 sponsor his admission. (Tr. 457, 498; PX 6D).

(13) Local 15 expressly "reserves the right to prescribe its own rules with respect to acquisition and retention of membership within the framework of the governing constitution of the International Union" (PX 7, Art. IV, Sec. 1) and any candidate "must be a qualified and competent person and otherwise fulfill the requirements of the Constitution of the International Union of Operating Engineers." (Id., Art. IV, Sec. 2).



(14) Locals 14 and 15 are the exclusive bargaining agents for 85% of the persons operating and maintaining construction equipment and doing surveying work within their respective trade and geographic jurisdictions. The Locals have collective bargaining agreements with a large number of employers and employers' associations (PX 40-60) which require the employers to recognize the Union as a source of qualified employees (e.g., PX 50C, at 3; PX 46, at 3). Although there are instances where employers may initially hire nonunion help directly, both unions effectively control the work opportunities within their jurisdiction. Until the forties, Locals 14 and 15 had closed shop contracts with employers which required these employers to hire only union members. (Tr. 59).

(15) Locals 14 and 15 have the following officers elected by the membership, which officers are primarily responsible for the affairs of the Union, including the negotiation of collective bargaining agreements: President, Business Manager, Vice President, Secretary and Treasurer. (PX 6, at 2; PX 7, at 5).

(16) The Business Manager is the principal officer of the Unions. (PX 6C, at 4; PX 7, at 6-11; Tr. 18). The Local 15 Business Manager appoints the business agents or representatives for each of Local 15's branches. (PX 7, at 7). Local 14's Business Manager also appoints Local 14's business agents



(PA 5D, Art. XVIII, subdv. 1, at 82). Local 14 and some branches of Local 15 have divided responsibilities among their business agents on a geographic basis. These business agents in the course of their duties are primarily responsible for conducting the day-to-day affairs of their branches.

(17) Local 14 has never had a Black or Spanish surnamed (hereinafter "minority") person serve as President, Business Manager, Vice President, Treasurer, business agent, or a member of any executive board, or committee to examine the qualifications of applicants for membership. (PX 39, at 3-13). Local 15 never had a minority member serve as such an officer until 1972 when a minority member was made a trustee (PX 38, at 8) and, later in 1975, was appointed as a member of its Executive Board. Another minority member was appointed as an auditor in May 1973, apparently following the death of another minority member serving as auditor (PX 38, at 10), and shortly thereafter became a trustee (Tr. 3247).

(18) When first chartered in 1937, Local 15's membership was almost all white (Tr. 57-59). As of September 1, 1974, Local 15 had 6,362 members of whom 415 (6.5%) were minority persons. These were divided among the five branches as follows (PX 93 and 99):

	<u>Total Members</u>	<u>Minority Members</u>	<u>% of Total</u>
15	2,411	134	5.6%)
15A	702	99	14.1%)
15B	326	47	14.4%
15C	1,491	59	4.0%
15D	1,332	76	5.7%

Of these 415 minority members, 124 (or 31.1% of the total) were admitted after this lawsuit was filed in July 1972 as follows (PX 99):

15	-	26
15A	-	69
15B	-	4
15C	-	17
15D	-	8

Of these 415 minority members, 318 (or 76.6% of the total) have been admitted since July 1, 1965, the effective date of the Civil Rights Act of 1964, as follows (PX 99):

15	-	91
15A	-	99
15B	-	39
15C	-	43
15D	-	46

Of the 318 minority members admitted since July 1, 1965, 124 were admitted since this suit was instituted in 1972 and 194 prior thereto.

The approximate membership and minority membership of Local 15 from January 1, 1960 to November 1974, has been as follows:

	<u>Total</u>	<u>Minority</u>	<u>%</u>
1/1/60	3,024	30	1%
1/1/64	4,584	78	1.7%
1/1/65	4,680	93	2%
1/1/66	4,772	99	2.1%
1/1/67	4,740	112	2.4%
1/1/68	4,984	135	2.7%
1/1/69	5,153	171	3.3%
1/1/70	5,252	202	3.8%
1/1/71	5,494	240	4.4%
1/1/72	5,661	273	5.7%
1/1/73	-	331	-
11/1/74	6,362	415	6.5%

(19) As of September 1, 1974, Local 14 had 1,555 members, of whom 44 (2.8%) are minorities; 1,398 are in Local 14, of whom 24 (1.7%) are minorities; and 157 are in Local 14B, of whom 20 (13.3%) are minorities. Two of these 44 minority members are Spanish surnamed.

(20) Members of Locals 14 and 15 generally have no more than a high school education and neither union requires applicants to have a high school education (PX 5D, at 29-30; PX 6C, at 8-10; PX 7, at 14-15). The available labor pool for operating engineers in the New York City area today, as well as in the past, consists primarily of males living in the union's jurisdiction who have a high school education or less.

(21) The Black percentage of the New York City male labor force is 13.18% and the Spanish surnamed percentage of that labor force is 12.67%. Therefore, for the purposes of this suit the minority percentage of the New York City male



labor force is 30.85%. (PX 1A, Table A(2), at 3).

(22) The Black percentage of the New York City male labor force 16 years of age and over who have a high school education or less is 20.76%. The Spanish percentage of such labor force 16 years of age and over who have a high school education or less is 15.63%. Therefore, for the purposes of this suit, the minority percentage of such labor force 16 years of age and over who have a high school education or less is 36.39%. (PX 1A, Table A(2), at 2).

(23) The U.S. Army Corps of Engineers trains some 3,300 operating engineers annually, about 20% of whom are Black. (Tr. 1742-43, 1766).

(24) The IUOE has since 1965 sponsored a Job Corps training program for operating engineers lasting from 18 months to 2 years, which program is financed by the Federal Government and conducted by members of the IUOE. This program appears to relate to equipment under the jurisdiction of Local 15 rather than that under the jurisdiction of Local 14.

#### Local 15

#### Training for Local 15 Operating Engineers

(25) Historically New York City operating engineers in Local 15 have learned their trade from on-the-job experience



and in the past have relied, to an appreciable extent, upon friends and relatives for their training or for the opportunity for training, whether as an operator, maintenance engineer, oiler, mechanic or surveyor.

(26) In December 1970, Local 15 began to operate a small training facility near Kennedy Airport. Initially the school had three types of equipment: backhoes, front-end loaders and bulldozers. Gradually additional types of these machines and a cherrypicker were added. The school operates on Saturday only, since many of the students are employed during the week. Union members serve as instructors, the school being financed by the Training Fund of Local 15. (Tr. 3566, 3570-79). Since the school's inception, minorities seeking work from or membership in Local 15 are referred by business agents to the school, where, if they claim to be experienced, they are tested on three types of equipment or, if inexperienced, are admitted to the school or placed on a waiting list. However, all applicants for membership have not been sent to the school for testing or training but are permitted to work and be tested by their employers. Very few of the white applicants are required to take and pass the tests at the school, as borne out by the school's admission figures. From July 1972, when this lawsuit was filed, to November 1, 1974, Local 15 admitted 124 minority members, while from January 1, 1972 to November 1,

1974, the total membership increased by approximately 700 so that of the latter approximately 575 must have been white. However, during this period only 20 whites, as compared to 33 nonwhites, came in through the school. (DX G).

(27) While the majority of applicants for membership in Local 15 who are sent to the Local's school are minorities, there is no discrimination as between whites and minorities attending the school; in fact, three of the six instructors are nonwhite. However, since the school training requirement is imposed primarily upon minorities, it adversely affects their employment and membership opportunities. The school has enough room for about 50-55 at one time and in September 1974 had a waiting list of about 200. (Tr. 158-59, 319). It graduated 17 men in 1972, 30 in 1973, and 6 in the early part of 1974 (DX G): approximately 20 were union men taking retraining and approximately 30 were nonunion, with a little over one-half of the nonunion men being minorities, so that the school has the ability to train only about 15 minorities per year for admission to the Union. (Tr. 3191).

(28) Other training programs produce large numbers and percentages of minority graduates, yet Local 15 refuses to accept the experience and qualifications of these minority graduates. The Job Corps training program for operating engineers, sponsored by the IUOE, not only consists of classroom work but

also of practical experience operating bulldozers, front-end loaders, backhoes and graders, as well as surveying work. It would appear to be better than Local 15's training program. Likewise, the training program of the United States Army Corps of Engineers, and the subsequent experience received by enlisted men operating equipment similar to that operated by Local 15 would appear to be more effective than Local 15's training program. Since a substantial number of the graduates of the IUOE and Army programs for operating engineers are minority persons who return to New York City, Local 15's refusal to accept their status and training, where less experienced and less or equally qualified white persons without such training are referred, and in fact even admitted to the Union, discriminates against such minorities. The actual on-the-job training traditionally available to whites is superior to the Union's school because (a) the skills can be learned quickly and properly on the job; (b) there are actual working conditions imposed on the men as they learn; and (c) the men are compensated by an employer for their training time.

#### Local 15 Job Referrals

(29) The combination of closed-shop contracts prior to 1948 requiring that only union members be employed, and the virtually all white composition of Local 15 had the effect in the past of excluding minority persons from this industry.<sup>11/</sup>



(30) The job referral practices of Local 15 before and after the effective date of the Civil Rights Act of 1964 have had the effect of discriminating against minorities and maintaining the effects of past discrimination. Employers usually seek employees they need directly from the Union, or call directly a union employee they have employed in the past. Minorities represent a far greater percentage of nonunion persons available for and seeking work.

(31) Local 15 runs a hiring hall, known as "the hall" or the "day room". Employers and employees rely heavily on the Union for job referrals, 30% of the members of Local 15 using the "day room" with the remaining 70% steadily employed. Work assignments are not customarily made on a first come, first served basis, but rather are made in the order in which an individual has signed the list. However, a new list is made up each week, so that someone who has been waiting for a job for four weeks may go to the bottom of the list. Also, a man does not necessarily sign the list in the order that he entered the hall. In signing the list he sets down his name and the equipment he can operate. He also may indicate his union affiliation, if any, or whether he is a "permit man". In making the work assignment, the decision of the business agent is based upon subjective rather than objective criteria. Although there is no credible evidence of deliberate discrimination in the re-



referral procedures over recent years, there is not sufficient information made available to nonunion applicants, particularly minorities. Unless a man writes down the length of time he has been unemployed, this fact would play no part in his eligibility for assignment. The business agents know only a few hundred members, and usually can only rely on a limited knowledge of a man's skill. They know few minority permit men and generally require them to be tested, which may mean no referral. This system of giving work to union and nonunion men on the basis of the subjective, discretionary decisions of business agents, unsupported by objective and fair tests or criteria, or even by personal observation with respect to the job skills in question, and often the result of ignorance or personal preference, operates to the disadvantage of minorities.

(32) All members of Local 15 have been admitted as full journeymen. Local 15 has never had a formal apprentice program with a specified academic or practical training curriculum, and specified periods of on-the-job training during which an apprentice is promoted to higher skill and salary levels until he reaches journeyman's status, but has relied for its membership on applicants learning the trade on their own and informally. Local 15's school, primarily designed for minorities, is not an apprentice program. The IUOE strongly encourages its local unions to form Registered Apprentice Engineers

subdivisions under Article XIV of its Constitution (PX 5D), which would be governed by IUOE's standards (Tr. 3733-34), and many locals have apprenticeship programs. Although Local 15 professes to concur with the policy of the IUOE on apprenticeship programs (Tr. 49), it has declined to establish such a program. Local 15 has also never complied with requests from the New York State Department of Labor to set up an apprentice program.

If a formal apprentice program were established, Local 15 would have to regularize the procedures and techniques for training operating engineers, and would make it more likely that minorities would receive equal training.

(33) Local 15 has no consistent and objective criteria for approving applicants for membership. Up until 1971, Local 15 had no method of testing the qualifications of new persons desiring membership, and generally assumed that an individual was fully qualified and eligible for membership if the contractor who employed him was satisfied with his work. (Tr. 78). Although all of the Local 15 collective bargaining agreements have Union security clauses which require new employees to join the union after a specified period, such clauses are not consistently enforced.

When Local 15 began its training school in 1970, it began for the first time to test for itself the qualifica-

tion, of some individuals who sought union admission and referral as operators, but no test is administered for surveyors, mechanics, maintenance engineers or other non-operators.

(34) Local 15 has in the past heavily relied upon nepotistic and word-of-mouth recruitment for obtaining applicants, i.e., the opportunity to get training and job assignments for Local 15 work has depended heavily upon whether one had friends or relatives in the Union. This is still true, even as to the minorities. The existence of such schools, established for training new persons or improving the skills of the Union's members, is not generally known outside of the Union.

(35) The requirement now imposed by Local 15 on most minorities, that operators who seek admission to the Union must pass the Union's test, and must do so on at least three pieces of machinery used at the school, is new, not consistently required of all applicants, and not clearly required by economic or business necessity. Of course, the ability to operate machinery is irrelevant to the many non-operators job categories available to a Local 15 journeyman. Prior to the existence of the school the requirement was less than three pieces and it was not regularly enforced.

Many people with some type of union affiliation have been and still are admitted to membership in Local 15



without taking any test, particularly members of Locals 15A and 15C.

The union school only administers tests on loaders, dozers and backhoes--not on other major pieces of equipment--so that the test cannot and does not even determine whether a man can operate three pieces of Local 15 machinery. Local 15 does not require its members to operate three pieces of equipment but permits them to specialize. (Tr. 3141). If one can run one piece of machinery and desires to be a multi-skilled operator, he can pick up the techniques of other machinery on the job. Indeed, as noted, certain machinery cannot be learned at the school and must be learned on the job. (Tr. 313, 326). It should be noted that only some of Local 15-15A members are operators--there is a substantial number of members who are maintenance engineers or welders. There is enough unskilled work available to supplement the operator skills of men when they are first admitted to the Union, if they are not skilled on more than one piece of equipment. The Union should admit all men to membership with only the quantity of skills actually needed.

(36) The practical test actually administered by Local 15 to some equipment operator applicants to measure their ability as an operator is the only practical or written test Local 15 administers to applicants for admission to any branch. This



test is completely subjective, has never been validated as job related, and is not required by business necessity. The test is given only to some operators and not to non-operators, such as welders, shop mechanics, surveyors and others. There are no uniform and objective criteria for proficiency or skill used to determine a passing performance, there are no written questions, there are no uniform and objective tasks which are assigned as part of the test, and no evaluation is made of an applicant's knowledge of safety or repairs. There is no evidence that Local 15 has ever validated the test as job related or which shows it is required by business necessity.

(37) The admissions policies of Local 15 discriminate against minority persons. Before 1970, white nonunion persons could obtain membership by getting a job through the union hall, performing satisfactorily on one piece of machinery, and then being brought into the Union under collective bargaining agreement security clauses requiring new employees to join the Union within a specified period. Thereafter he could learn to operate other equipment on the job. Today, minorities must meet a more restrictive entrance requirement than was required of the existing heavily white membership. Many new white members bypass the testing requirements by receiving training and obtaining a job through friends or relatives in the Union, and after performing satisfactorily on the job, are admitted to the Union.

There is also evidence that minority applicants who have qualified for membership are forced to wait longer than white applicants before they receive their union book. Local 15 has used the test, in certain instances, to disqualify or discourage qualified minority applicants who should have been admitted promptly after performing satisfactorily for an employer--e.g., operators with prior private experience outside New York City, especially in Latin America and the West Indies, or with training at the Job Corps facility sponsored by the IUOE, or with military engineering training and experience.

(38) Local 15 has jurisdiction over the hoisting machine called a cherrypicker, the operator of which must have a New York City Hoist Machine License Type C. It also has jurisdiction over welders, most of whom must have a City, State or utility company license. No other equipment operated by Local 15 requires a license and very few cherrypickers are used by that Local. Accordingly, the possession of such licenses is not a prerequisite for admission to membership, although many of its members have such licenses.

(39) There is no competent evidence that minority non-union men have been discriminated against on a job to which they have been referred by Local 15 or by their employers. Nor have minorities been intentionally discriminated against with respect to the health and welfare benefits under the col-

lective bargaining agreements between Locals 14 and 15 and the various contractors and contractor associations, except insofar as delay in using a union book may delay receipt of such benefits.

#### Local 14

#### Training for Local 14

(40) Most people learn to operate Local 14 equipment informally while they are members of Local 15, relying for their training on friends or relatives who are members of Local 14 to give instruction. Members of Local 15 and 15A work as oilers, firemen, and apprentice and maintenance engineers on the heavy construction equipment such as cranes and shovels operated by members of Local 14 and thereby obtain the basic qualifications toward becoming journeymen engineers. It is possible, of course, for a man to obtain experience in an area where a license is not required, or as the result of service with the armed forces. As has been noted, Local 14's charter does not include an apprenticeship or recruitment program. This informal method of training extends to actual preparation for the City licensing test, with individual Local 14 men conducting classes for Local 15 men. While Local 14 has established "a retraining facility" at the same location as Local 15's school, it is used primarily only for those who are members of Local 14.

(41) Local 14's training and recruitment policies, on which it relies for new members, operate to discriminate against minorities. The reliance on Local 15, with its discriminatory practices, for the pool of men who may be trained results in the effective exclusion of minorities from the only viable available training. The discriminatory effect is clear: in 1974, the New York City Department of Buildings renewed 860 type A licenses, of which only 3 belonged to minority individuals, and 161 type B licenses, of which only 1 belonged to minority individuals. (PX 91C; Tr. 1692).

(42) Local 14 requires that all members must have a New York City Hoist Operators License, notwithstanding that much of its equipment requires no license and that members frequently specialize in non-licensed equipment. Local 14 requires that an applicant for union membership hold either an A or B license and all current members have had such a license at one time. However, 456 out of 1,432 members (exclusive of 14B) failed to renew their licenses between September 1, 1973 and August 31, 1974. While some portion of those who did not hold valid hoisting machine licenses during this period represents members who have retired or who were not working during this period, it seems clear that, having acquired membership, a member does not necessarily renew his license. The practical effect of a significant amount of Local 14 equipment being un-



licensed and the significant degree of specialization by Local 14 operators is to permit a substantial percentage of Local 14 members to earn their living without needing any hoist machine license. There are at present from 25 to 50 long-boom cranes in the City, and there have never been more than 100. (Tr. 397, 562, 589 and 3836).

(43) Local 14 requires that all members be able to operate several pieces of major equipment, i.e., two or more of such equipment as power shovels, draglines, backhoes, clamshells, pile drivers, cranes and double drum derricks, yet most of the members specialize on one particular type of equipment.

(44) Although sometimes waived, an individual must have 200 days experience operating Local 14 equipment in order to become a member. Furthermore, a member vouching for an applicant must have been a member for at least five years, must have known the applicant for at least two years prior to his application, and must not have vouched for a candidate for the past two years. (PX 6C, at 8-10).

(45) The membership requirements of Local 14 operate to discriminate against the admission of nonwhites, and are not justified by business necessity. Local 14 has intentionally limited the size of its membership, and has on occasion refused membership to qualified minorities with licenses. The

membership has remained relatively constant over the years,<sup>12/</sup> at approximately 1,500-1,600 members, with an actual work force of approximately 1,100. (Tr. 416).

#### Local 14's Referral Practices

(46) Local 14's job referral practices operate to discriminate against nonwhites. Local 14 maintains a joint hiring or job referral hall with Local 15 and has historically maintained this arrangement since much of the equipment is jointly manned. There is no order in referral from the hall and no seniority, but specialties are honored where possible. The Union effectively controls work opportunities within its jurisdiction. Only if there are no men out of work will the Union permit others to work in its jurisdiction. This is true even though the "permits", when given, are usually to members of other locals and primarily are for Local 14 work on which no license is required or is not critical.

#### Contract Compliance and Affirmative Action

(47) Federal and local employment opportunity compliance provisions require affirmative action and minority hiring goals on publicly financed work in the operating engineers' trade in approximate proportion to the minority population in the City of New York. These goals were imposed after a volun-

tary plan, known as the New York Plan, to increase minority employment proved inadequate. Specific plans for placing minorities as a part of affirmative action plans encouraged by the government originated with the Federal Model Cities Program in the late 1960s in the Bedford-Stuyvesant and Brownsville sections of Brooklyn. In 1970, this concept was extended to the entire City of New York in the form of an industry-sponsored voluntary plan known as the New York Plan which was designed to bring more minorities into the construction trades and to help satisfy contract compliance requirements.

The New York Plan initially provided for a maximum of 800 (later increased to 1,000) trainees and was offered on behalf of the New York Building Trades Council. The plan applied only to public sector work, although there was an understanding, never carried out, that it would be extended to the private sector.

The City of New York withdrew from the New York Plan in 1973 because the industry did not even meet its commitment for 800 trainees in the first year of the program. New York City issued Executive Order 71 which requires minimum ranges of minority employment, including both journeymen and trainees, on a craft-by-craft basis to reach roughly the same percentage of minorities in the particular construction craft as the percentage of minorities in the population of the City of New York. The City uses a percentage goal of 38% minority representation

which each craft is expected to achieve by July 1, 1978.

The Federal Government likewise withdrew its approval of the New York Plan for contract compliance purposes under Executive Order 11246. Under the latter Order relating to equal employment provisions in construction contracts with federal funding, there is now in effect a 25% minority employment goal for operating engineers. On a particular contract in which there is joint city and federal funding, the city's goal, if higher, would apply.

(48) As a participant in the New York Plan, Local 15 has provided unstructured and inadequate job assignments and training for minorities and has inhibited contractors from complying fully with equal employment contract requirements. Although Local 15 participated in the formation of the New York Plan, operating engineer trainees under that plan have been provided on-the-job training which has been very unstructured with few operating engineer trainees getting training in handling equipment. Local 15's original minority goal was 33. As of October 1974, after three years, Local 15 had placed 170 of whom 117 were currently working without union books and an additional 15 had received books. (DX H). Furthermore, the Federal Government has frequently cited contractors for under-utilization of operating engineer minority workers--the contractors reporting difficulty in getting the operating en-



gineer unions to refer sufficient minorities for them to be in compliance.

(49) Local 15's practices regarding pay scale and union membership under the New York Plan have also discriminated against minorities. Although an operating engineer trainee is supposed to be guaranteed a union book after three years, there were only 15 who had received their union books since the inception of the program in 1974. This is in contradiction to the experience of whites who frequently obtain their books after being on the job for a brief period of time.

The rate of pay for operating engineer trainees, which applies only to those minorities who are members of the New York Plan, is lower than the rate of pay to journeymen and remains at a lower level for at least the three-year period. All other men enter the Union and receive full journeyman wages, even if they are performing maintenance or helper work.

(50) Local 14, whether or not it is a signatory to the New York Plan, has failed to participate in any affirmative action programs, and has actively opposed and avoided its equal employment opportunity responsibilities. The original understanding was that both Local 14 and Local 15 would participate, but Local 14 has not allowed any New York Plan trainees on its work. The failure to place or even allow permits for trainees in Local 14 includes Local 14 work which does not require a

license.

### DISCUSSION

#### The Statistical Imbalance

As has been found, Locals 14 and 15 both were historically almost all white, and remain substantially white today. Thus, Local 15's membership in 1974 was only 6.5% minority (415 out of 6,362 members) approximately 30% of whom were admitted after this lawsuit was commenced. (Finding No. 18). Local 14's membership in 1974 was only 2.8% minority (44 out of 1,555 members). (Finding No. 19). The minority percentage of the New York City male labor force is 30.85% and the minority percentage of such force 16 years of age and over who have a high school education or less is 36.39%. (Findings No. 21 and No. 22).

This enormous disparity establishes a prima facie case of a pattern and practice of discrimination in violation of the Civil Rights Act of 1964. Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971); Chance v. Board of Examiners, 458 F.2d 1167, 1176 (2d Cir. 1972); Carter v. Gallagher, 452 F.2d 315, 323 (8th Cir. 1971), cert. denied, 406 U.S. 950 (1972); United States v. Bethlehem Steel Corp., 446 F.2d 652, 655 (2d Cir. 1971); United States v. Ironworkers Local 86, 443 F.2d 544, 551 (9th Cir.), cert. denied, 404 U.S. 984 (1971); Parham v. Southwestern Bell Telephone Co., 433 F.2d 421, 426 (8th Cir.

1979).

In this circuit, the available labor force, rather than overall population statistics, has been held to be more appropriate for determining minority employment statistics. Rios v. Enterprise Ass'n Steamfitters Local 638, 501 F.2d 622, 632-33 (2d Cir. 1974). In other words the Court must determine what the minority percentage is for each case on the basis of the minority percentage of the labor force in the Union's jurisdiction, and from which the industry draws employees. Id. at 632-33. In the instant case there is no educational requirement for union membership, and it is reasonable to conclude that only persons with a high school education or less apply for work as operating engineers in New York City. The most relevant and clearly available minority and white pools of labor for this industry can be most closely approximated by the census figures available showing the minority and white male civilian labor force 16 years old and over with a high school education or less in the area of the Union's jurisdiction. The geographic jurisdiction of Locals 14 and 15, except for a small part of Local 15C, is New York City. (Finding No. 4).<sup>13/</sup> Accordingly, New York City is the proper geographic jurisdiction for calculating the relevant minority labor force percentage and there is no merit in Local 15's charge that using New York City alone "grossly overstated the percentages and the figures are therefore inaccurate and an improper basis for establishing a prima

facie case of discrimination" (Local 15 Memo., at 5-5), especially since the Union has introduced no evidence on the question at all. It is sufficient to state that the material utilized and the methods employed by plaintiff have been approved by this circuit. Patterson v. Newspaper & Mail Deliverers' Union of N.Y., 384 F. Supp. 585, 593 (S.D.N.Y. 1974), aff'd, 514 F.2d 767 (2d Cir. 1975) (U.S. appeal pending); Rios v. Enterprise, Am'n Steamfitters Local 633, supra, 501 F.2d 622.

In addition it should be noted that the minority membership percentage of the unions herein is significantly lower than the percentage of minorities in other related national sources of manpower. Thus, the percentage of operating engineers coming out of the Army who are Black is about 20%, far greater than the minority percentage in these unions (Finding No. 23), and this further establishes a prima facie case. Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Comm'n, 482 F.2d 1333, 1335-37 (2d Cir. 1973), cert. denied, 421 U.S. 991 (1975); Chance v. Board of Examiners, supra, 458 F.2d at 1172-73.

Engagement by Local 15 in a  
Pattern and Practice of Discrimination

While intentional discrimination against minorities is of course violative of Title VII, it is clear that such a determination is not necessary in order to find the practices of



the defendant unions unlawful.

"[G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability." Griggs v. Duke Power Co., supra, 401 U.S. at 432.

The touchstone for any judicial scrutiny of employment practices is the Supreme Court's mandate in Griggs which prohibits, unless justified, any "employment practice which operates to exclude" minorities protected by Title VII or "'freeze' the status quo". Id. at 430, 431 (emphasis added).

Neutral practices which have a discriminatory effect or which perpetuate the effects of past discrimination are unlawful. See, e.g., United States v. Bethlehem Steel Corp., supra, 446 F.2d 652; United States v. Ironworkers Local 86, supra, 443 F.2d 554; Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245, 48 (10th Cir. 1970), cert. denied, 401 U.S. 954 (1971); United States v. IBEW, Local 38, 428 F.2d 144, 149-50 (6th Cir.), cert. denied, 400 U.S. 943 (1970); United States v. Sheet Metal Workers, Local 36, 416 F.2d 123 (3rd Cir. 1969); Local 189, United Papermakers and Paperworkers v. United States, 416 F.2d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919 (1970). Employment practices which are fair in form but discriminatory in operation are prohibited unless shown by defendants to be required by business necessity. Griggs v. Duke Power Co., supra, 401 U.S. at 431.

Once it has been shown that a practice "operates to ex-

clude" a protected group, the defendants have the burden of showing business necessity. The rule in this Circuit is that

"[n]ecessity connotes an irresistible demand. To be preserved ... [a practice] must not only directly foster safety and efficiency of a plant, but also be essential to those goals." United States v. Bethlehem Steel Corp., supra, 446 F.2d at 662 (citation omitted).

See Local 139, United Papermakers and Paperworkers v. United States, supra, 416 F.2d at 989.

(a) Recruitment and Training Practices of Local 15

The membership of Local 15 has historically been white, and remains substantially white at present. (Finding No. 18). Its members have learned their trade from on-the-job experience and have relied, to an appreciable extent, upon friends and relatives for their training (Finding No. 25), which training has been informal and nonstandardized. Since training is a necessary prerequisite to jobs or job referrals and therefore to admission in Local 15, any discriminatory training practices operate to deny minorities equal jobs and admission to the Union. Since the Union started with practically an all white membership, the preferential practices historically denied minorities equal training opportunities and since such practices have been continued, they continue to deny minorities equal treatment and perpetuate the effects of past discrimination.

Courts in this Circuit have not hesitated to prohibit

discriminatory union training programs in the construction trades in New York City that relied upon favoritism, nepotism and word of mouth practices. United States v. Local 638, Enterprise Ass'n Steamfitters, 360 F. Supp. 979, 990 (S.D.N.Y. 1973), aff'd sub nom. Rios v. Enterprise Ass'n Steamfitters Local 638, supra, 501 F.2d 622; United States v. Wood, Wire & Metal Lathers, Local 46, 328 F. Supp. 429, 436 (S.D.N.Y. 1971), aff'd, 471 F.2d 408 (2d Cir.), cert. denied, 412 U.S. 939 (1973). <sup>14/</sup>

The training facility which Local 15 established is in fact only available to a limited number of people and provides haphazard training. (See Findings No. 26 and No. 27). Minorities are now uniformly sent to the school and, if there is room in the classes, are required to attend each Saturday regardless of other work commitments, while whites still rely almost exclusively on the traditional on-the-job training. A far greater percentage of whites continue to gain their training outside the school than is true for minorities. Furthermore, Local 15 has refused to recognize or accept without further training or testing minority graduates of other training programs, such as those operated by the Job Corps or by the military services.

While Local 15 may have created and operated this school with the best of intentions and as an affirmative aid to minorities, this is irrelevant if the effect has been to restrict minority employment opportunities.

(b) Admission Tests

Since the establishment of the training school, Local 15 has been directing minority applicants for union admission and job assignments to the school in order to test their skills as operators. This "test", which requires applicants to demonstrate proficiency or productivity on at least three pieces of equipment, constitutes a significant increase in Local 15's standards for admission. Heretofore, anyone performing his work to the satisfaction of the employer was admitted to the Union, and members were admitted with proficiency on only one machine or as non-operators performing maintenance or surveyor work. Today, minority applicants for membership, and to a far lesser degree, white applicants, are forced to take a multiskill operator's test, instead of being given the chance to demonstrate their ability to work for a contractor. The consequences of failing the test are generally to not be referred for work by the union hall, and to spend long periods of time waiting to get into and/or graduate from the small training school. Significantly, no person who gained admission prior to the institution of the test has been required to take this test either to obtain job referrals or to retain union membership. The raising of admission standards by a union with a history of excluding minorities violates Title VII by tending to freeze the status quo. Griggs v. Duke Power Co., supra, 401 U.S. at 429-30, 436; United States v. Jacksonville Terminal Company,



451 F.2d 418, 456 (5th Cir. 1971), cert. denied, 406 U.S. 906 (1972). See generally United States v. Ironworkers Local 86, supra, 443 F.2d 544; United States v. Sheet Metal Workers, Local 36, supra, 416 F.2d 123; Local 53, Asbestos Workers v. Vogler, 407 F.2d 1047 (5th Cir. 1969).

Not only does the test requirement perpetuate the white union membership which exists because of prior discrimination, but also it continues to be an active and contemporary example of unlawful adverse and disparate treatment of minorities. Almost all whites admitted to Local 15 since the school began have never taken the test, irrespective of whether they are operators. During the period from December 1970 when the school was opened until November 1, 1974, the membership of Local 15 increased by 868 of whom 693 were whites and 175 were minorities. Yet there is evidence that only 20 whites graduated from the school.

Furthermore, the testing procedures are unlawful for the impact on minorities caused by their vague, inconsistent, subjective, and arbitrary application and administration. A test which is required of some, not of all; which relates to only a small portion of the relevant skills despite the applicant's knowledge of many others; which has no standards for measuring success; which is given by different people applying different rules; and the passing of which does not guarantee prompt union membership is an obstruction of equal employment

opportunities without any relationship to business necessity, let alone the irresistible demand required by United States v. Bethlehem Steel Corp., supra, 446 F.2d at 662. The requirement of proficiency with a number of types of equipment has nothing to do with safety or efficiency, and Local 15 does not argue to the contrary. It argues only that the men will be "equipped to earn a living in that industry to provide for themselves and their families." (Local 15 Memo., at 51). Finally, even were there an irresistible demand for such testing of operators, this would not in any way justify the low percentage of minorities among the many Local 15 members doing maintenance work who do not operate equipment.

Finally, Local 15 has violated EEOC Guidelines, 29 C.F.R. § 1607.3-.8 (1974), and therefore Title VII by using a test which adversely affects the hiring and membership of minorities without validating the test by methods prescribed by the guidelines as evidencing a high degree of utility for job performance and showing an alternative is not available. 29 C.F.R. § 1607.3. The absence of any validation effort simply confirms the conclusion that this test procedure has no business necessity.

(c) Referral Practices of Local 15

Local 15's job referral practices and the operation of its hiring hall or "day room" are informal and unstructured.

There is no logical order of referral of workers, and no objective criteria for referral. (Finding No. 31). It appears that minorities are referred less frequently and wait far longer for job referrals no matter what the employment conditions are, and that union officials tend first to refer people known to them who usually are union men and therefore predominantly white. As already noted, prior to 1948 the collective bargaining agreements required employers to give hiring priority to union members, almost all of whom were white, thereby excluding minorities. Since Local 15 is still heavily white, its referral practices are illegal because they tend to discriminate against minorities and perpetuate the effects of past discrimination. Franks v. Bowman Transportation Co., 495 F.2d 398, 419 (5th Cir.), cert. denied, 419 U.S. 1050 (1974); United States v. Carpenters & Joiners Local 169, 457 F.2d 210, 217 (7th Cir.), cert. denied, 409 U.S. 851 (1972); United States v. Bethlehem Steel Corp., supra, 446 F.2d 652; United States v. Ironworkers Local 36, supra, 443 F.2d 544; Parham v. South Western Bell Telephone Co., supra, 433 F.2d 421; Jones v. Lee Way Motor Freight, Inc., supra, 431 F.2d 245; United States v. IBEW, Local 38, supra, 428 F.2d 144; United States v. Sheet Metal Workers Local 36, supra, 416 F.2d 123; Local 189, United Paper-makers and Paperworkers v. United States, supra, 416 F.2d 930; United States v. Local 633, Enterprize Ass'n Steamfitters, supra; 360 F. Supp. 979.

Engagement by Local 14 in a  
Pattern and Practice of Discrimination

The implication that intentional discrimination in the membership requirements and the employment practices of Local 14 must be established is, of course, not correct. The legal standard to be applied under Title VII is the discriminatory effect of the Union's practices. The issue is not whether there is any reasonable justification for standards or practices once a racially disproportionate effect is shown. Rather the Union assumes a heavy burden of proving that the standards or practices which have such effect are required by business necessity. Indeed, in this Circuit, the Union must show "irresistible demand". United States v. Bethlehem Steel Corp., supra, 446 F.2d at 662. The prima facie case of discrimination against Local 14--i.e., the disparity between its membership statistics and the percentage of minorities in the available labor force--is greater than that against Local 15, so that Local 14 has a heavy burden of showing that the policies and practices which have maintained such a low minority percentage are justified. The Court must look not only to Local 14's membership requirements, but also to the sources and methods of obtaining new members on which the Union has relied, its role in the industry, and its racial composition.

It seems clear that Local 14's reliance on the predominantly white labor pool of Local 15 for recruitment and



training results in the perpetuation of the white membership of Local 14, and therefore, in freezing the status quo. It operates in a discriminatory and illegal manner.

Local 14 claims to have no training program at all, but only a "retraining program" for people who are already members. While there is evidence that non-members of Local 14 have utilized the program, it seems clear that Local 14 has relied predominantly on informal on-the-job training and experience in Local 15 to enable an individual to seek entrance into Local 14. Furthermore, the informal training on Local 14 equipment which Local 15 men and some permit men receive is in fact given by members of Local 14, usually friends or relatives of the trainees.

The separate charters of Locals 14 and 15 involve no actual prohibition against training, nor is there evidence that a journeyman union is barred from offering training. In fact, the International Constitution permits and encourages such training; and a formal sub-charter for which a local may freely apply relates only to registered apprentices (PX 5D, at 40) which neither Locals possess. Where there is no formal apprenticeship program and the sole opportunity for learning the trade is on-the-job training available only to helpers working under the Local's auspices, the likelihood of discrimination is very great.

City licensing requirements have absolutely nothing to do with Local 14's self-imposed barriers to training minorities. The City does not require that those few who receive informal on-the-job training on Local 14 equipment (whether through Local 15 or otherwise) have a license prior to their training and experience on Local 14 equipment.

Finally, the control which Local 14 has on the available work results in the control of others' ability to get training, resulting in the illegal exclusion of minorities. (Findings No. 14 and No. 41).

#### Local 14's Membership Requirements

1) The License Requirement. Local 14 requires that all members must have a New York City Hoist Operators License, notwithstanding that much of its equipment requires no license (Finding No. 10), that members frequently specialize in non-licensed equipment, and that a substantial number of members earn their living in such non-licensed work (Findings No. 42 and No. 43). The fact that the Union imposes its license requirement on membership--rather than merely requiring, as does Local 15, that members who work on licensed equipment be licensed--results in the exclusion of qualified minorities from Local 14 and is unjustified by business necessity and such requirement is invalid. Not only do most members of Local 14 specialize, but it is also clear that the long-boom crane

specialty involves few people; the heavy construction, road, tunnel and sewer work which utilize much non-licensed Local 14 equipment--a.i., graders, rollers, shovels, locomotives, tunnel mucking machines, compressors, and welding machines--form a substantial part of the work in which the members specialize, especially in times when building work is slow. The license requirement does not measure skills for non-licensed work, nor is it a prerequisite to much of the work in Local 14's jurisdiction, except as artificially imposed by the Union on all of the potential applicants for membership. It is significant that there are almost no minorities who actually possess a license. (Finding No. 41). This very condition is a direct result of Local 14's discriminatory training policy, relying on the predominantly white pool of Local 15 members to be trained for their licenses by Local 14 members on an informal, unstructured basis. Since the use of the license requirement for all Local 14 applicants excludes almost all minority operating engineers from membership while not excluding almost all whites, the requisite racial impact of the requirement has been shown and shifts the burden to Local 14 to show by "irresistible demand" that there is a fit between the license requirement and all Local 14 jobs. Local 14's reliance on, if not active use of, the discriminatory practices of Local 15 for training and experience for the license and membership,

only accentuates the illegality of the requirement.

In the past, citizenship and language requirements imposed by the City kept Blacks and Spanish-speaking persons from the Caribbean and South America from obtaining licenses, and they thereby were prevented from joining Local 14 whether they were qualified to operate licensed or non-licensed equipment. Local 14's present policies illegally perpetuate the effects of this past discrimination.

2) Ability to operate more than one piece of equipment.

Local 14 asserts that "[t]his requirement is designed to assure an applicant that he will be able to earn a living at his trade, after he has been admitted to full union membership." (Local 14 Memo., at 13-14). However, non-members are not exposed to the same experience, or allowed to attend the Local 14 retraining facility to obtain additional skills. Moreover, most members of Local 14 specialize on one piece of equipment. If a potential member has not had experience on sufficient pieces of equipment, he may be given a permit to broaden his skills, but only if he already has a license. (Local 14 Memo., at 15). There is no business necessity for excluding from membership those who are qualified on even one piece of Local 14 equipment. Nor is there any business necessity for excluding those qualified on any piece of Local 14 equipment from an equal chance at employment on the equipment on which they are qualified.



3) The 200 day experience requirement. Local 14's requirement of 200 days experience in addition to having a license, when viewed against the background of Local 14's discriminatory training policies hereinbefore discussed, is also discriminatory. Some persons have been able to get additional experience by obtaining a "permit" from Local 14, but this permit is limited and not given out on a systematic basis. It is admitted that the requirement is "flexible". (Local 14 Memo., at 12). Since there are no objective criteria for applying this requirement, it cannot be sustained in its present form.

#### Local 14's Job Referral Practices

Local 14 admittedly gives preference in job referrals to union members, thereby effectively shutting non-union minorities out of work within its jurisdiction and precluding them from obtaining training and experience to get a city license. The job referral system itself is informal and unstructured, with minorities who are not union members getting jobs only when there is a shortage of available union men. Local 14 concedes that its "day room" is only available to assist members and licensed non-members. (Local 14 Memo., at 18). The non-licensed minorities who have been excluded from membership are usually not even allowed to use the Local 14 referral facilities for access to the non-licensed work in Local 14's jurisdiction. Permits are issued on occasion for non-licensed work,

but permit men do not get equally good experience as members, and may not use the Union's "retraining" facility. These practices are illegal.

It should be further noted that insofar as Locals 14 and 15 use their separate charters to prohibit a man from regularly working on both Local 14 and Local 15 work--whether as a member or on permit--if the man is capable of doing work in the jurisdiction of both Locals when job conditions permit, this use of the separate charters limits the ability of Local 15 minorities to make an adequate living.

Lack of Affirmative Action  
by Locals 14 and 15 to  
Correct Discriminatory Practices

Local 15

Local 15 claims credit for its role in establishing and cooperating with the New York Plan. (Finding No. 48). However, Local 15 fails to accept, as it should, the blame for the New York Plan's limitations or discriminatory treatment by Local 15 of minorities who were supposed to be aided or for its almost total reliance on this inadequate, discriminatory plan for the training of minorities. (Findings No. 48 and No. 49). Local 15 was indirectly responsible for the failure of any extension of the Plan to the private sector. Local 15 could easily have placed minorities on private construction sites as well as on the public construction jobs to which the Plan ap-

plied. The Union would place on the City of New York the responsibility for the Plan's inadequacies in recruitment by claiming that it was the City which recruited for the Plan. This is rebutted by Local 15's own attempt to show affirmative action by stating that it accepted more trainees than the sub-goal which was set for it. (Local 15 Memo., at 45-46). The City was hardly responsible for the extent of the union's acceptance of trainees, except insofar as the City attempted to force more minorities to be hired through contract compliance efforts. Local 15 did not in fact even reach its limited "goal" under the New York Plan since the goal was supposed to be based on the number of minorities employed continuously during a given year, and not on the number of minorities accepted. (Tr. 3780-83, 3793-95).

Local 15 also cites as an example of affirmative action to place qualified minorities what it terms a "unique" agreement with the Recruitment and Training Program (hereinafter "RTP"), a program funded under a grant from the U.S. Department of Labor to facilitate the entry of minority workers into the construction industry. (Tr. 3688-89). The number of minorities referred by RTP to Local 15 were insignificant (15 to 20 per year) and the agreement with RTP required RTP either to find the jobs itself or to locate them through the office of Federal Contract Compliance when a contractor was out of compliance, and to clear the job with Local 15 (Tr. 3697-98).

rather than use the Local 15 referral hall or "day room" as was the practice with whites. Furthermore, not all who were referred were accepted. From 1967-1969, RTP placed 12 to 15 a year--more particularly 9 men in 1968 and 12 in 1969. Also, the agreement provided that minorities so cleared would only get their union books after seven weeks on the job. When Local 15's training school was established, a new agreement was reached by Local 15 with RTP which required that minorities referred by RTP had to take an examination and demonstrate proficiency on five pieces of equipment and could only be referred out after they had passed all tests. It was further provided that the minorities would only receive their union books after an unspecified period of time. If one did not know all of the pieces of equipment, then he was relegated to the training school until he passed on all five pieces. It therefore appears that whatever affirmative action Local 15 claims to have taken to counteract discriminatory practices was in itself discriminatory.

#### Local 14

Local 14 has failed to participate in any affirmative action programs. Although it is not clear whether Local 14 was a signatory to the New York Plan, it failed to place any trainee on either licensed or non-licensed equipment. The Union continually made reference in its meetings (PX 10 and 10A) to govern-



ment efforts and requirements to train and place minorities on publicly financed work and described these efforts as a "hazard" to the trade which might compel the Union to review minority labor for prospective membership.

The only actions which it attempts to characterize as affirmative action programs are two amendments to its By-laws "(1) in 1964 requiring that a member in good standing for five years could only sponsor one candidate [for membership] every two years --- thus reducing the possibility of nepotism or political interference with the admission of minorities; and (2) eliminating, in 1966, the requirement that the union membership vote upon candidates for admission." (Local 14 Memo., at 7). The elimination of the requirement of a membership vote on new candidates was in fact forced on Local 14 by an amendment to the International Constitution, and the Local sought to avoid its effect by requiring applicants to "present themselves" at a regular meeting before giving a member "permission" to sponsor an applicant. (PX 10, minutes of 6/14/68, at 3). Indeed, the limitations on frequency of sponsorship and "permission" to sponsor new members only served to preserve the status quo and the racial makeup of the Union.

#### CONCLUSION

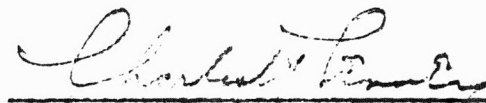
For the foregoing reasons, the Court finds that Locals 14 and 15 of the International Union of Operating Engineers

have engaged and are engaging in a pattern and practice of discrimination and of resistance to full enjoyment by non-white and Spanish-surnamed workers of rights secured to them by the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c) and § 2000e-2(d).

The parties are directed within 30 days hereof to submit proposed orders embodying injunctive and affirmative provisions to correct the abuses found to exist herein, and for such other relief as may be deemed appropriate.

Dated: New York, New York

May 6, 1976

  
\_\_\_\_\_  
U.S.D.J.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,  
Plaintiff,

72 Civ. 2498 (CHT)

-against-  
LOCAL 14 INTERNATIONAL UNION OF OPERATING  
ENGINEERS, et al.,

Defendants.

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FOOTNOTES

- 1/ Pursuant to the pre-trial order dated September 19, 1974 filed herein, the Equal Employment Opportunity Commission ("EEOC") was substituted for the United States of America as party plaintiff in accordance with the 1972 amendments to Title VII of the Civil Rights Act of 1964 authorizing such action by EEOC. 42 U.S.C. § 2000(e)-6(c).
- 2/ The issue relating to subparagraph (f) of § 13 of the complaint relating to the filing of accurate reports with the EEOC has been abandoned. (Pre-Trial Order ¶ 1).
- 3/ The General Contractors Association of New York, Inc. ("GCA") contends that it has no collective bargaining agreements with Locals 14 or 15 and is not a proper party. It has been stipulated that the complaint does not assert any claim for liability against GCA. (Pre-Trial Order, at 11).
- 4/ The International Constitution permits branch subdivisions to be chartered to operate "under the direction and control of the parent Local Union". (PX 5D, Art. XIV, at 40-41, 44). Hereinafter "Local 15" or "the Union" shall refer to all branches; any reference to a branch of the Union will specifically use the term "branch".
- 5/ The unions are considered to be New York City locals by their principal officers, and they were so chartered. (Tr. 25). The International Constitution requires that the branches' territorial jurisdiction not exceed that of the parent local. (PX 5D, Art. XIV, at 40-41). Although the jurisdiction of Branch 15C appears to include Westchester, Putnam, Nassau, Suffolk and the southern part of Dutchess Counties, and members of 15C work in unspecified areas outside of New York. (PX 99; Tr. 372-74). For all practical purposes, however, the membership of the two Locals works almost exclusively within New York City.

FOOTNOTES

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- 6/ As a general proposition the two Locals do "the same work". (Tr. 25, 47). In fact, elsewhere in the country, it would appear that many of the members of Local 15 would be Junior and Assistant Engineers within a subdivision of Local 14. Those terms are used in all of the contracts with employers (see, e.g., PX 40E). The predecessors of these Locals also did some of the same work as each other, but at different locations on a building site. (Tr. 44-46).
- 7/ It is true that Local 15 is an amalgamation of Locals 130A, 125A, and 184A which covered apprentices, junior engineers (helpers and oilers) and some operating engineers on all building and heavy construction equipment in New York City, while Local 14 is an amalgamation of the parent Locals 130, 125, 184 and 403 which covered most of the operators of such equipment. (Tr. 43-47, 51-53, 382, 508-10, and 516). Local 14's jurisdiction, as mandated by its charter as issued by the IUOE, does not include an apprenticeship or recruitment program, Local 14 being strictly a journeyman local composed of licensed engineers. Local 15 on the other hand has a charter which permits it to maintain training or apprentice programs.
- 8/ Both Locals 14 and 15 utilize backhoes, with Local 14's backhoes being larger and requiring two operators, one a Local 14 man and one a Local 15 man. (Tr. 397-400). Locals 14 and 15 both operate rollers, the only difference being in size. (Tr. 400-01). Local 14 also operates a larger version of a Local 15 grader. Local 14 operates cherrypickers (a small hoist machine) and front-end loaders above the ground level on a building, while Local 15 operates the same equipment at the ground level. Other similar types of machines operated by both Locals include pavers, locomotives, road finishing machines, concrete mixers, tugger hoists and compressors. (PX 40E, at 15-22).
- 9/ Although the licenses issued by the City have been designated by different titles over the years, i.e., "Portable Steam", "A.M.P.E.S.", and most recently "Hoisting Machine Operator", Local 14 has always had such a license as a basic requisite for admission. (Tr. 512, 3041-42).
- 10/ Work in scrapyards performed by Branch 14B men and work performed on floating cranes do not require a license. (PX 112, at 9-10). In addition, no license is required for any



FOOTNOTES

III

work performed using any Local 14 equipment on tunnel work, and work for the Port Authority, Triboro Bridge and Tunnel Authority, Urban Development Corp., and State Dormitory Authority.

- 11/ Obviously, if contractors had to hire exclusively union men or at least give them first preference (since the union was virtually all white), minority individuals seeking work or union membership would receive little encouragement to obtain experience through employment with such contractors which would qualify them for membership.
- 12/ There apparently were more minorities in Local 184, Local 14's predecessor, in 1937 than in Local 14 at present.
- 13/ See Note 5 supra. There is testimony that some 170-180 of the 1,471 members of 15C worked outside the City because their employers had relocated certain shops outside the City. (Tr. 374-75). Also there is testimony that an unspecified number of the 1,332 members of 15D worked outside the City. (Tr. 372-73). The most favorable result for defendant Local 15 would be to reduce the minority percentage by approximately 1%. In the face of such an insignificant amount of employment outside of the City, the use of statistics for New York City is clearly proper. Boston Chapter, NAACP, Inc. v. Beecher, 504 F.2d 1017, 1020 n.4 (1st Cir. 1974), cert. denied, 421 U.S. 910 (1975).
- 14/ Such practices have also been universally condemned in other Circuits. See, e.g., United States v. Ironworkers Local 86, supra, 443 F.2d at 552; United States v. Sheet Metal Workers, Local 36, supra, 416 F.2d 137; Local 53, Asbestos Workers v. Voiler, supra, 407 F.2d at 1054.

III

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY :  
COMMISSION, :

Plaintiff, :

-against- 72 Civ. 2498

LOCAL 14, INTERNATIONAL UNION :  
OF OPERATING ENGINEERS, et al. :

Defendants. :

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BEFORE:

HON. CHARLES H. TENNEY,

District Judge

New York, New York  
July 26, 1976 - 10:30 a.m.

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.,  
United States Attorney,  
Southern District of New York  
Attorney for Plaintiff,  
BY: MICHAEL DEVORKIN, ESQ.,  
Assistant United States Attorney

CORCORAN & BRADY, ESQs.,  
Attorneys for Local 15  
BY: ROBERT D. BRADY, ESQ.,  
Of Counsel.

2 APPEARANCES (Continued):

3 DORAN, CALLERAN, O'HARA & DUNNE, ESQS.,  
Attorneys for Local 14

4 BY: RICHARD L. O'HARA, ESQ.,  
Of Counsel.

5 SHEA, GOULD, CLIMENKO & KRAMER, ESQS.,  
Attorneys for General Contractors Association

6 BY: JAMES J. A. GALLAGHER, ESQ.,  
7 Of Counsel.

8 MANNING, CAREY, REDMOND & TULLY, ESQS.,  
Attorneys for Construction Equipment

9 BY: ARTHUR C. SCHUPBACK, ESQ.,  
Of Counsel.

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14 THE CLERK: Matter of Equal Employment Opportunity  
15 Commission against Local 14, International Union of  
16 Operating Engineers.

17 MR. DEVORKIN: Ready for the Government.

18 MR. BRADY: Ready for Local 15.

19 MR. O'HARA: I am here for Local 14, I would like  
20 to make an application.

21 THE COURT: Yes.

22 MR. O'HARA: We had previously on July 19th by  
23 letter to the Court requested a brief adjournment because  
24 of the fact that the gentleman who tried the case and  
25 who had prepared the proposed counter-order as well as

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2 reviewed the Government's order was out of town for a  
3 week and would return on August 2nd and we asked for a  
4 brief adjournment.

5 We were advised that this request was denied  
6 because of the logistics problem involving the great  
7 number of attorneys involved. I have discussed this morning  
8 with the few attorneys showing up for named defendants their  
9 feeling and I would like to renew that application at  
10 this time.

11 THE COURT: I would like to be able to accommodate  
12 you. This thing has really got to be moved along a little.  
13 I am going to be away two weeks starting next week. That  
14 brings it into the end of August. What I was hoping to  
15 do today was to go over some of these plans because I  
16 expect to name an administrator and I expect to confer  
17 with people this week on that. So that whatever I can  
18 accomplish, maybe I can't, with Mr. Kennedy away, complete  
19 everything that I had hoped but at least I can make  
20 some progress. That is what I hope to do.

21 MR. GALLAGHER: If your Honor please, I am here  
22 representing the General Contractors Association.

23 THE COURT: I think I have all the appearances.

24 I will address some questions to the Government  
25 because they have the most comprehensive order and one



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that I believe will be the basis for the order that is  
going to be entered.

In paragraph 3, Mr. Devorkin, I can't make much  
sense out of everything following the sixth line there.  
I think there may be a typographical error.

MR. DEVORKIN: I might point out a typographical  
error, in the third line from the bottom of that  
paragraph rather than "required" it should read "requiring."  
There are two or three other additions in the order that  
I will maybe point out to the Court as we get to those  
points.

THE COURT: That was the first thing I had.  
Do you have anything before that?

MR. DEVORKIN: No, sir.

THE COURT: Paragraph 5. I would rather have  
a goal of a round figure than -- I would rather change  
that to 36 per cent rather than 36.39.

MR. DEVORKIN: Very well.

THE COURT: That figure appears in one of the  
counterorders, too; I will make it 36 per cent.

Then assuming that we can make some progress  
this week, I was going to change the date throughout  
to August 1st rather than July 1st.

MR. DEVORKIN: That is fine with the Government,

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2 your Honor.

3 Your Honor, could I speak to one point in  
4 the paragraph under the remedial goal?

5 THE COURT: Yes.

6 MR. DEVORKIN: There is one point of many but  
7 fairly obvious on which there is disagreement between the  
8 Government and the unions.

9 The point is that the Government has included  
10 within its base against which the remedial goal should  
11 be measured pensioners.

12 THE COURT: I have noted with respect to 6-C  
13 that we should exclude pensioners and civil service  
14 employees.

15 MR. DEVORKIN: That is the union proposal. I  
16 think that is an incorrect thing to do, your Honor, for  
17 this reason: First of all, to point out this is a  
18 substantial number of people we are talking about. It  
19 is not insignificant. It will make a substantial difference  
20 in the number of minorities who eventually participate in  
21 this industry.

22 But the reason the Government thinks pensioners  
23 should be included is this: First of all, it appears  
24 at least from the employment records that we obtained  
25 and studied that pensioners on occasion work in the

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2 industry and under the contracts of the defendant unions  
3 they maintain voting rights and authority over union  
4 policies. But the more fundamental point is that the  
5 theory under which we are imposing such a goal is that if  
6 minorities hadn't faced these discriminatory practices, that  
7 as of this date they would share in the economic benefits  
8 that this union grants to its members --

9 THE COURT: But I think you are unbalancing  
10 the figure here. I would be glad to hear from the unions  
11 on this because I think this is an important point. This  
12 is one of the things I wanted to take up.

13 MR. DEVORKIN: Could I finish my thought?

14 THE COURT: The fact that they may occasionally  
15 work --

16 MR. DEVORKIN: Occasionally can mean money  
17 throughout the year during the year which is taken away  
18 from minorities. It means jobs minorities don't get.  
19 They do maintain voting rights.

20 The point is what we are trying to do is two  
21 things: We are trying to put minorities into the union  
22 so they share control over the union and get economic  
23 benefits.

24 THE COURT: That's right.

25 MR. DEVORKIN: If minorities had shared equally

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from the very beginning of this industry, minorities would represent 36 per cent of the pensioners in this industry and they would enjoy the pension rights that all of those almost exclusively white pensioners enjoy. Minorities as a class have been denied those rights and when we get five years out or however long it takes to reach the goal it is fair to assume that some of the minorities who work will retire and will become pensioners. Some of the minorities we are going to be bringing in or some of the minorities who are in now will drift over to minority status.

So I think pensioners status with the rights that are involved both in controlling the union and in economic benefits that are derived from the work they have done are rights and benefits minorities have been denied and we ought to strive to put them in.

THE COURT: I don't know how many pensioners actually work. We are talking about a work force and we are talking about a percentage of that work force as a goal and if we are going to take people who are not truly members of that work force it seems to me that you are going beyond the goal itself.

Now, if the minorities become pensioners they will not be taken into consideration in determining



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2 the goal for the work force.

3 MR. DEVORKIN: I agree, your Honor. I think  
4 it is important that minorities have been denied all of  
5 the pension rights which those pensioners now have.  
6 If we had non-discriminatory practices historically, the  
7 same percentage of minorities would be pensioners as  
8 the work force.

9 THE COURT: What you are accomplishing here really  
10 is setting a higher goal than the 36 per cent.

11 MR. DEVORKIN: No, I am not. The people who  
12 have benefited from the discrimination in the industry  
13 includes those people who are pensioners.

14 THE COURT: You are talking about the percentage  
15 of the work force. In determining the 36 per cent you want  
16 to include people who are not strictly members of the  
17 work force.

18 MR. DEVORKIN: They do work in the industry.

19 THE COURT: Then we will change it to pensioners  
20 who do not work in the industry. There must be some  
21 pensioners who don't work at all.

22 MR. DEVORKIN: I agree with that. If we could  
23 establish some yardstick for when we are going to measure  
24 that -- as of what point in time are we going to measure  
25 that.

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2 THE COURT: At the time you have your goal set  
3 for a particular percentage. How are you going to set the  
4 other goals if you have a fluctuating membership? As  
5 of particular dates.

6 MR. DEVORKIN: You would exclude those pensioners  
7 who have not worked at all in the industry the previous  
8 calendar year?

9 THE COURT: Let's hear from the union.

10 MR. DEVORKIN: The only other point I make, if  
11 I am incorrect, fine, but the pensioners do exercise rights  
12 as union members to vote on union matters and if that is  
13 the case, then you are substantially diluting the influence  
14 of the minorities who come into this industry as to control  
15 and influence of union matters. You don't include pensioners  
16 who can vote in union affairs.

17 THE COURT: I won't reach any decision on this  
18 today. I would like to hear from the unions on this point.

19 MR. O'HARA: Could we be heard on that briefly,  
20 your Honor?

21 THE COURT: Yes.

22 MR. O'HARA: I think there are a couple of  
23 points. The first one is in the decision and opinion of  
24 the Court, the entire basis was based on the statistics pro-  
25 vided by the Government and it was always a percentage of

2 the labor force. To now introduce as a percentage of the  
3 labor force pensioners who technically are permitted to  
4 work a minimum of days in any given month or else they  
5 relinquish their check, I think it is four, I think you  
6 are going to distort the statistic way out of any concept  
7 that this Court has or at least in part in its opinion.

8 The right to vote and the political control  
9 of the union I don't see as being an issue in this trial  
10 at all. At no point in the pleadings or in the record  
11 was this raised, and everyone who is a member of the union  
12 will have a right to vote regardless of whether they  
13 are a minority or majority.

14 Finally, as a practical matter right now, in  
15 an industry that is suffering about 50 per cent unemployment  
16 or more we can be reasonably assured that the pensioners  
17 are not working. So that I think to get into this matter  
18 of pensioners is raising a big issue where there shouldn't  
19 be one. Clearly they are not part of the work force,  
20 clearly they weren't intended to be part of the work force,  
21 they don't have any impact on the work force when they do  
22 work. It is a few days. So I think they ought not to  
23 be included in any realistic statistic.

24 MR. BRADY: If I may say a few words? I happen  
25 to know there are no pensioners working. Moreover, the

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2 question of the voting rights and political activity in  
3 the union, surely your Honor's lawyer is going to determine  
4 the manner in which minorities are treated and it is not  
5 going to be a matter for the unions themselves through  
6 political activity or otherwise in the union. I take it  
7 that doesn't go to our problem at all. Our problem is  
8 working with the work force.

9 MR. DEVORKIN: I would like to respond to one  
10 thing. The central issue in the complaint in the case  
11 and the Government proved it, is that the union was  
12 excluding minorities from union membership. Union membership  
13 includes an awful lot of things. It includes control over  
14 union policies, election of union officers, it includes  
15 derivatively from that appointment of business agents  
16 who have critical control in the industry, it includes,  
17 therefore, putting people in union positions in whom  
18 minorities have confidence and to the extent you would  
19 be substantially diluting minority influence in the  
20 union --

21 THE COURT: I think when you consider all of  
22 the provisions in your order they certainly will not be  
23 deleting anything. All I am trying to do is not play  
24 around with figures and try and bite off more than you have  
25 got under my situation.

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MR. DEVORKIN: The Government of course doesn't want to do that. All we want to do is give minorities a position in the union as well as economic --

THE COURT: They will get it, including the right to become pensioners.

MR. DEVORKIN: If you don't include the pensioner, you are going to be substantially diluting --

THE COURT: How many pensioners do we have?

MR. DEVORKIN: In Local 14 it is 400 or 500 men. I don't know the number for Local 15. There are approximately 1400 or 1500 men in Local 14. There was a substantial dilution of what the minorities will gain in this case.

THE COURT: When you say that, we are dealing here with a work force. By including, and I assume that the majority of these 400 or 500 are whites --

MR. DEVORKIN: In Local 14 you can assume 99 per cent of them are.

THE COURT: Then you are adding 400 or 500 to what is supposed to be the work force upon which to base 36 per cent. I don't know, with respect to that union, that might make it 38 or 39 per cent and that is not what I held in my decision and that is not what the statistics show. I don't want to throw this whole thing

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2 off under some political argument that they are not going  
3 to have the vote. This particular section that we are  
4 talking about here has nothing to do with voting. It  
5 sets goals and it sets goals based on a work force.

6 If you want to include some provision somewhere  
7 else in there which will eliminate this loss of political  
8 power due to past practices, well and good, then I will  
9 consider it, but I won't consider it in the context of  
10 fixing goals because you are manipulating the goal that  
11 I set in my decision.

12 MR. DEVORKIN: Your Honor, I don't want to alter  
13 by trick the goal your Honor set in his decision. The  
14 base we have been using throughout the whole trial has  
15 been union membership, which everybody has used a figure,  
16 including pensioners as union members. That has been the  
17 basis we have worked from from the very beginning of this  
18 case. There is nothing in the record of this case proven  
19 that would distinguish pensioners from those people  
20 Paragraphs 5 and 6 use "Union membership" as a basis.  
21 They don't use people actively working in the industry.  
22 They use union membership as a base.

23 THE COURT: The member is based on the statistics  
24 with respect to the work force. And you are attempting  
25 to inject into that a body of people who are not, strictly

2 speaking, members of the work force.

3 MR. DEVORKIN: Your Honor, the only point is  
4 that if there had been no discrimination in this industry  
5 the percentage of union members, which includes pensioners  
6 and has throughout the trial, would be 36 per cent.

7 Your Honor did find that. There can be no doubt  
8 that 36 per cent of everybody in the industry, no matter  
9 what their status, would be minority. And that is why  
10 they should be included as they have throughout the  
11 proceedings in the union membership figure, which has  
12 always included pensioners.

13 THE COURT: Questionmark.

14 MR. BRADY: Would it be appropriate at this  
15 time, your Honor, to get back to the question of goals  
16 or quotas?

17 THE COURT: I am hoping to hear from you  
18 gentlemen. That is what you are here for. When we come  
19 to these things I would like to hear from you. I don't  
20 want to hear just from the Government.

21 MR. O'HARA: Maybe I misunderstood the proceeding.  
22 I thought you wanted to ask some questions of the Government.

23 THE COURT: I said this is the most complete  
24 order, proposed order, that I have received and it would  
25 be the basis for any final order that I entered, therefore

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2 I would address myself to this in the first instance.

3 MR. BRADY: So we will hit each part as we go  
4 along?

5 THE COURT: Yes.

6 MR. BARDY: I want the record to reflect that  
7 as your Honor knows Local 15's proposed order did not  
8 include goals. The reason I did not, your Honor, is that  
9 I do not think that as far as Local 15 is concerned  
10 the record or the findings of fact, for that matter,  
11 showed such an egregious situation of a long pattern of  
12 discrimination as has been required by the Court of Appeals  
13 in this circuit in the Truckman case and more recently  
14 in the Local 28 case where they reaffirmed the position  
15 that temporary goals can be justified only when two  
16 conditions are met.

17 There must be a long, clearcut, egregious pattern  
18 of discrimination and, of course, the other point to that  
19 is the effects of the goal cannot fall upon a relatively  
20 small identifiable group.

21 I want to point out to your Honor that in Chance  
22 versus the Board of Education the Court of Appeals in  
23 stating why goals were granted in the Rios case, rather  
24 in the 28 case they said this, they said that this was  
25 more than just a statistical imbalance, that there were

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actual cases -- the Court of Appeals says, as a matter of fact, first in Rios there was substantive evidence of intentional past discrimination as opposed to a mere racial imbalance of a non-discriminatory origin; and second, that the union in Rios could expand its total membership to take in this new amount of people without a harmful effect on an identifiable group.

Now, I think that your Honor has found Local 15 has not made sufficient efforts, but we did make efforts, your Honor. We had the New York Plan from the very beginning. It was an accepted plan. We exceeded our goals. When we started the training school, 50 per cent of the instructors were black. Every year the majority of the graduates were minorities. By one of the court orders in one of the other cases, it said your apprentice training program, each class must reach 30 per cent minority. We did that voluntarily. We had more than 30 per cent minority. Then we had the arrangement with recruitment and training. This arrangement no other construction union in the country had where these people went out and recruited in the neighborhoods, and Mr. Roffles, who testified, testified we cooperated fully.

This case, according to the findings of your Honor, there is no credible proof of discrimination in

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2 referral or on the job site.

3 Now, I don't think that this is the type of  
4 case that gives a basis or background for the imposition  
5 of this type of order or goal. Our order has met the  
6 specific problems raised by your Honor. We are formalizing  
7 our apprentice training. We are offering a test to anyone --  
8 the first test to be given only to minorities and  
9 those who claim discrimination, and it is directed at  
10 individual cases of discrimination as proposed by Judge  
11 Feinberg in his concurring opinion in the Local 638 case.

12 I just don't think that the past pattern here,  
13 it is strictly statistical imbalance, would support a  
14 basis for a temporary goal or quota and we note that the  
15 act itself of course there is some question even in the  
16 Court of Appeals' minds whether or not any quotas or  
17 goals can be set because of the wording of the Civil Rights  
18 Act, and I just wanted the record to reflect our position.

19 THE COURT: Thank you.

20 MR. DEVORKIN: I don't want to respond because  
21 your Honor's opinion is 180 degrees from what Mr. Brady  
22 said. This isn't a pattern of practice case. Discrimination  
23 in the industry goes back 40 years and your Honor so  
24 found. It is not a statistical imbalance case. Every  
25 case he is talking about, goals were affirmed in the

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1 Court of Appeals. The only dispute is whether specific  
2 interim quotas can be used in isolated instances. Really,  
3 that is Mr. Brady's appellate argument you just heard.  
4

5 THE COURT: He may not be far off the mark.  
6 I don't know. I tell you, this is still a fluctuating  
7 area in the law.

8 MR. DEVORKIN: In each case he cited, your Honor,  
9 there was a goal like the one we are talking about in  
10 paragraphs 5 or 6 that was affirmed. So on that concrete  
11 specific point he is in error.

12 THE COURT: Very well. 8.

13 MR. O'HARA: Your Honor, before we go further,  
14 you will have to excuse me on the procedural questions,  
15 because I was only lately brought in.

16 It was my understanding that this proceeding  
17 had thus far resolved the question, at least as far as  
18 your opinion goes, as to liability and that the order was  
19 to fix the liability and it was to make some efforts  
20 to resolve the remedies but the remedies question was  
21 disjunctive of the liability issue in this trial. This  
22 is the reason, one of the main reasons, we find objection  
23 to the whole tenor of the Government's proposed order.

24 If you will note, in our proposed order a  
25 number of the items had been left to be worked out by competent

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2 experts, then suggestions by the neutral competent  
3 experts would be made to the Court which at that point in  
4 time, if there were differences, they would be resolved  
5 by the Court and the final result would be adopted by  
6 the Court.

7 In reviewing the order of the Government, it is,  
8 to say the least, draconian in its attack on the union.  
9 I agreed with Mr. Brady's general comment that the  
10 Government may have established without any exception  
11 some statistical argument but cases that have set up  
12 arrangements as elaborate, detailed and onerous as this  
13 order proposed to do, it usually involves matters  
14 where there was contempt of court or a previous finding  
15 and then a flying in the face of that finding by continued,  
16 possible wrongdoing.

17 There are cases, many cases, right here in this  
18 Southern District where there have been findings of  
19 liability and the proposed remedies have been nothing like  
20 this. I can point specifically to the case that our  
21 office tried a number of years ago, the Ironworkers Local  
22 40 case, where again there was a statistical finding  
23 not unlike the one here and machinery was worked out but  
24 the machinery didn't call for the appointment of an  
25 administrator, the administrator having power to appoint



2 hearing officers and testing officers. The burdon on  
3 a thousand man active union is inconceivable, especailly  
4 a thousand active member union that doesn't have any dough.

5 So that I think we have to take one step back  
6 and view this in proper perspective. I think to go  
7 forward and sign an order such as the Government has offered  
8 without any input from conferences, parties attempting  
9 to work out a solution, suggestions from people who have  
10 in fact been involved in these things before, is wrong.

11 Our office has been involved in several of them  
12 over the years. We have found when sitting down and  
13 working out solution with the U.S. Attorney's office and  
14 making joint suggestions to the Court, it has had a much  
15 more salutary affect than trying at this point in the  
16 proceedings to propose all of the terms and conditions.

17 THE COURT: I am not against any such procedure,  
18 but I am shutting the door to any undue delay in getting  
19 this thing on the road. That is my concern.

20 MR. O'HARA: Then perhaps we ought to address  
21 ourselves to some procedural questions as to what the  
22 best machinery would be to start today.

23 MR. DEVORKIN: The Government is always open  
24 to proposals from the other side ot settle the case.  
25 This is a responsibility in the public interest. Any

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2 time the unions want to come in and present cogent  
3 plans for discontinuing discriminatory practices and giving  
4 minorities their rights, that can be done. We had all  
5 waited a long time and now we are at judgment day. Your  
6 Honor has written an opinion. The Government wants an  
7 order from the Court as soon as possible. We don't want  
8 the discrimination that is continuing to this day to  
9 continue any longer. If Local 15 and Local 14 want to  
10 propose something, my door is always open.

11 But that is not where we are right now and  
12 we shouldn't delay in the expectation that is what we  
13 are going to get in the immediate future.

14 THE COURT: I will go over what I have noted  
15 in the Government's order and I will then give you  
16 gentlemen an opportunity to sit down together and maybe  
17 work out modifications that are agreeable to the Government  
18 or if you have some dispute on it, why, you can take it  
19 up with me this week.

20 This isn't the first order of this kind that  
21 has been entered in this court.

22 8(a) I would change the word "increase the  
23 frequency" to, "alter the frequency," and leave that to  
24 the administrator.

25 MR. DEVORKIN: That is fine.

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1 THE COURT: As long as he has the power to  
2 change the frequency, I think that is all you need.

3 (d), that may be a typographical error to  
4 "review and approve" and shouldn't it be "object to the  
5 disposition of" or "reject"? I don't know.

6 MR. DEVORKIN: It should be "reject it."  
7 "To" should be out.

8 THE COURT: 10, assuming we get into this, five  
9 months seems to me to be an excessive period of time  
10 for any of these claims with all of the provisions for  
11 notification and all that. Two months I think is  
12 sufficient.

13 MR. DEVORKIN: Could it be then -- I was trying  
14 to allow enough time for the administrator and the unions  
15 to get out the notices and so forth.

16 THE COURT: Two months.

17 MR. DEVORKIN: Could it be two months from the  
18 date notices are sent out to give the parties, potential  
19 claimants, two months to find out and file a claim?

20 THE COURT: I will make it three months from  
21 the date of the entry of this order.

22 MR. DEVORKIN: Thank you.

23 MR. O'HARA: Just before we proceed, under  
24 the proceeding we are supposed to indicate the problems  
25



1 we have. One of the problems we have is that the  
2 injunctive relief we feel is broader than the opinion  
3 of the Court and a specific example is the provision  
4 involving the affirmative action obligation imposed on  
5 contractors. That is strictly between the contractors  
6 and the Government or whatever governmental agency they  
7 sign with and I don't know that any evidence was  
8 specifically adduced showing a contravention of these  
9 agreements. So we feel that that is -- that should be  
10 omitted.  
11

12 THE COURT: What are you referring to?

13 MR. O'HARA: If you look at paragraph 2 starting  
14 on page 2 and running to the top of page 3.

15 MR. DEVORKIN: The reason I have done that is  
16 because your Honor found, at page 34 of his opinion, for  
17 example, that Local 14 has actively opposed and avoided  
18 its equal employment opportunity responsibilities and  
19 Local 15 has inhibited the contractors from complying  
20 with the appropriate equal opportunity requests or non-  
21 white worker requests from governmental bodies seeking  
22 to enforce these various affirmative action obligations  
23 we are talking about.

24 It is not only in the record but your Honor  
25 found that is what happened.



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2                   MR. O'HARA: Let's take a hypothetical.  
3                   Suppose the City of New York decided to appropriate  
4                   number 147 next week. Is your order to be complied with  
5                   at 36 or is this union compelled under this affirmative  
6                   action program to go to 44? They have no input in that  
7                   given situation.

8                   MR. DEVORKIN: That is incorrect. A lawful order  
9                   of a state or local or federal body in force for government  
10                  sponsored work is what we are talking about here, and  
11                  the union exhausts all legal appeals to that lawful order,  
12                  then they are obligated to follow that lawful order  
13                  and they can't interfere with the contractor's attempts  
14                  to follow that lawful order.

15                 All we are talking about here, after all, is  
16                 the union shall not interfere with the contractors from  
17                 following lawful affirmative action orders from the state.

18                 How can the union say to the Court, "No, we  
19                 should be permitted to interfere with contractors following  
20                 lawful affirmative action orders?"

21                 MR. O'HARA: We are not saying we should be  
22                 permitted. We are saying we should not be bound by a  
23                 permanent injunction barring any showing we did or not.

24                 THE COURT: I suggest you take that up on your  
25                 appeal.

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2 Certainly it seems to me to be embodied in the  
3 decision.

4 MR. GALLAGHER: Your Honor, may I be heard,  
5 please.

6 THE COURT: Yes.

7 MR. GALLAGHER: As I read No. 4 of the proposed  
8 order, it has the reverse aspect of enjoining the defendant  
9 contractors association. I think you will recall at the  
10 outset of the trial that as far as General Contractors  
11 was concerned there was made part of the pretrial order  
12 an admission of no liability if there was a violation.  
13 There is no reflection in this proposed order excluding  
14 General Contractors Association. It would appear here  
15 in the recital it includes all, including the General  
16 Contractors Association.

17 THE COURT: That does present some problem.

18 MR. DEVORKIN: Your Honor, the defendant  
19 General Contractors Association are part of the collective  
20 bargaining agreements. They were named for purposes of  
21 relief in case such as this. The injunction prohibits  
22 them simply from engaging in any practice which has the  
23 effect of discriminating against minorities. They have  
24 been a party to this industry and it seems to me that  
25 they are critically necessary for relief because they in

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a sense present the one loophole, the one floodgate that can circumvent the entire order.

THE COURT: Technically speaking, liability was not an issue with respect to the contractor defendants and in accordance with the terms of the pretrial order.

MR. DEVORKIN: That is the case but the complaint on which the pretrial order also said we were going forward did pray for relief in the nature of permanent injunctions against all defendants, including the defendant contractors.

It doesn't seem to me the defendant contractors have to be liable for the discrimination to be enjoined as parties to the contracts and practices in the industry which resulted in discrimination against minorities.

THE COURT: Certainly I can see your point and they should be enjoined in the future without being held liable as to any past activities.

MR. DEVORKIN: That is correct. We had a lot of talk throughout the case about their status but we have never had a motion to dismiss or a motion to get out of the case on the basis of any legal ground cited. We just had a lot of talk, as it were, about what position am I in, what position am I not in, but there were no motions addressed to the complaint and I think it is proper where they are a necessary party for relief to

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2 obtain an injunction looking to the future to insure  
3 that their conduct is consistent with the union's conduct  
4 with whom they join in administering this industry,  
5 so to speak.

6 MR. GALLAGHER: Your Honor, may I respond to  
7 that, please.

8 THE COURT: Yes.

9 MR. GALLAGHER: If I may respectfully refresh  
10 your recollection, a feature of the presentation was one  
11 confined to liability only and as far as making motions  
12 to get out were concerned, there was an admission orally  
13 on the record for three days by Mr. Devorkin prior to the  
14 entry in the pretrial order that no liability, which I  
15 take it is synonymous with no violation of the act, was  
16 being asserted against the General Contractors Association  
17 and at the end of the three days that was incorporated  
18 in the pretrial order.

19 It would seem to me redundant to make any motion  
20 at that point since we were out, and if there is no  
21 liability being charged, why should there be any injunction  
22 about a violation when none was charged?

23 THE COURT: The Court will retain jurisdiction  
24 over this. I may strike this paragraph and then have a  
25 hearing and maybe find there is a sufficient basis without



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2 having the goal delayed with respect to the other provisions.

3 MR. DEVORKIN: Of course, we prefer no delay  
4 as opposed to delay at this point. The only thing I point  
5 out is your Honor is aware from the order that an integral  
6 part of it is restructuring the basis on which jobs are  
7 referred in the industry.

8 It is quite clear that the one loophole that  
9 presents itself to giving minorities a fair shake in terms  
10 of jobs is the individual employers are free to circumvent  
11 the entire order and hire on a discriminatory basis, on  
12 a basis of relationships either to friends or relatives  
13 of employees.

14 THE COURT: Then they might become financially  
15 liable, too, as well as subject to injunctive provisions.

16 MR. DEVORKIN: If they did something prospectively  
17 that would be true, your Honor, but --

18 THE COURT: I don't envision them doing it  
19 myself.

20 MR. DEVORKIN: I wouldn't think so, but unless  
21 there is -- that might entail a new lawsuit.

22 THE COURT: No, we have this lawsuit.

23 MR. DEVORKIN: If they were liable for something,  
24 they would have to be liable because they are violating  
25 an order of the Court, and if they are violating an order

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of the Court indirectly because they are acting in concert with somebody when they are on notice of the order, they can be held liable for that.

It seems to me the Court can directly tell them, "You shall not do this."

If the Court can stop them if they do it --

THE COURT: I will have to look back over the pretrial order and all that because there is some question in my mind in view of the position as to their status in the trial we had --

MR. DEVORKIN: To conclude, we never receded from the position that they are a necessary party for relief in this case and that is what we are talking about now, relief. The question is are they necessary to grant full and effective relief or are they not, and if they are the Court can reach them through a prospective injunction.

THE COURT: All right.

MR. GALLAGHER: If there is no contention of liability, what exposure is there for relief? If I am not guilty of anything, why should I be penalized?

THE COURT: All right, we are going ahead. I said I will take a look at the order and maybe we will have to set this thing down for trial on possible

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2 practices by the contractors over the past years which  
3 would warrant injunctive relief. So I would be prepared,  
4 if I were you, to have at least some possible further  
5 hearing.

6 MR. O'HARA: If your Honor please, I would next  
7 like to call your attention to paragraph 5 on page 4.  
8 The final sentence talks about insuring regular and  
9 substantial progress.

10 I think that if regular and substantial progress  
11 are to be guaranteed you are shifting from the concept  
12 of goal to the concept of quota. We find that objectionable.  
13 If there is compliance with this order, that should  
14 be a full measure due the Government and the Court in  
15 compliance with the order.

16 As to paragraph 6, we suggest that the  
17 distribution of the input be spread over a more extended  
18 period and be more gradual. Specifics are included in our  
19 proposed counterorder.

20 THE COURT: I think it is just a one-year  
21 difference in your counteroffer.

22 MR. O'HARA: That is correct, your Honor. I  
23 think that the percentage will rise more gradually as a  
24 result.

25 MR. DEVORKIN: Your Honor, I think it is important

that we try to meet the goal within five years. Five years is a long time. If there comes a point when the union is doing everything it can possibly under this order to get minorities in to meet these goals and it still can't meet these goals, then we can face that question, but the goals in themselves are not unreasonable and they should remain as a target to which the union should strive.

If it becomes impossible for legitimate reasons to reach them, they can bring that to the attention of the administrator and subsequently to the Court.

THE COURT: As to that language at the end of paragraph 5, I don't find that objectionable. Insuring regular and substantial progress is made does not insure the achievement of the goal.

MR. BRADY: Excuse me, your Honor, if I may.

As you know, I argued against goals entirely. The other point I want to raise at this point is that there is evidence in the record of various locals of unions working outside the five counties and, as a matter of fact, the Government's proposed order talks about suburban work later on in the order and we believe that the goal should be based upon the counties wherein the men are employed and the counties in which the labor force is drawn.



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2 THE COURT: We are not talking about a very  
3 great number of people. I think I cited cases where  
4 the same situation had existed where there was some  
5 employment outside of the particular counties.

6 MR. DEVORKIN: Your Honor also found as a  
7 practical matter the amount of work outside New York City  
8 was insignificant.

9 THE COURT: Yes.

10 MR. O'HARA: I think it should be pointed out  
11 to the Court the objection is not to the situs of the  
12 work but rather to the source of the people, the work  
13 force, who enter the membership of the union, your Honor.  
14 Many live in the adjoining counties to New York City.  
15 Under the law and the constitution of the union we  
16 must seek and obtain membership in either of these locals  
17 so that the basic question is if a statistic is to  
18 properly be induced, shouldn't these adjoining counties  
19 which provide in fact a substantial number, if not a  
20 majority, of the input be computed into the establishment  
21 of a statistic?

22 THE COURT: What you are doing, this is really  
23 an appellate argument as to the fixing of the so-called  
24 goals. I am talking about this order we are now working  
25 on.

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2                   MR. O'HARA: The next paragraph I would like  
3 to address myself to is paragraph 7 which provides for the  
4 appointment of an administrator. On behalf of Local 14  
5 we are opposed to the appointment of an administrator  
6 since there is no basis in the record or otherwise to  
7 establish the need for an administrator.

8                   We have not one case where a person -- any  
9 evidence where a person applied or attempted to apply  
10 and was rejected and we have no case where a person sought  
11 employment and was refused the facilities of Local 14  
12 and yet we are going to have an administrator now who  
13 will also, as I say, establish this elaborate machinery  
14 of then appointing a monitor to monitor the referral  
15 hall, he will also have the power to appoint hearing  
16 officers, among other things.

17                   THE COURT: If he needs them.

18                   MR. O'HARA: If he needs them.

19                   But the threshold questions hasn't been answered.  
20 What is the need for the administrator? As I say, I know  
21 of several cases here in the Southern District where there  
22 has been no administrator, where there has been an  
23 order providing for the running of referral halls and  
24 for admission to union membership where if experts are  
25 needed reference is made to educators who evolve tests

and run the tests and machinery is set up without imposing the financial burden and the stigma of an administrator.

Historically the courts have imposed an administrator or a monitor when there was a clear and demonstrable showing of specific wrongdoing to specific individuals, and there is also indication and clear showing of an absence of adequate remedy without the administrator.

None of this is present in our case, which again I would urge for the Court's consideration a program as outlined in Local 14's proposed order which meets all of the needs that this Court or any aggrieved party, if he exists, might want to avail himself of without the tremendous imposition of all of this complicated machinery which I am afraid will lead to as much or more problems that we are already confronted with and which we are seeking to solve.

MR. BRADY: If I may be heard on the same point, Local 15 also objects to the appointment of an administrator and would point out again in these cases wherein the goals have been set and an administrator is appointed, there has been shown a reluctance by the locals to adequately respond to court order.

Now, we don't believe that the record in this case provides a reasonable basis for inferring that there



will be future violations of the act. Indeed, there are many, many consent orders entered into throughout the country between the plaintiff here and various unions wherein referral systems are set up as suggested --

THE COURT: I have already indicated, Mr. Brady, that I am not shutting the door to any consent order that can be worked out by you with the Government, and to the extent that it can be done I welcome it. I do want to move this thing along. It has taken a long time. There is some likelihood now of improvement in the heavy construction business.

MR. BRADY: We hope.

THE COURT: We hope. And now is the time to do this in the best possible way. I don't think the Government wants to shove anything down anybody's throat.

MR. O'HARA: All I am suggesting is that I think that both unions have proposed a system for referral and review and outside people to come in and look over our shoulder. We would be happy to do that. I would think that if that didn't work out, -- I am sure it will work out. We proposed it -- if it didn't work out, propose that would be the time to go to the expense of an administrator.

THE COURT: We can agree on these goals and

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2 some of these things like the matter of pensioners and  
3 so on and agree on possibly not as complicated a setup  
4 as the Government proposes. If that can be done by the  
5 parties the Court would welcome it, with the understanding  
6 that if that didn't work out the Court would be in a  
7 position to possibly impose an administrator or something  
8 of that nature. I am not ruling that out.

9 MR. BRADY: I understand, your Honor.

10 THE COURT: All I have had is this group of  
11 orders which in certain respects are not antagonistic  
12 one to the other but they are not quite as complicated.

13 MR. DEVORKIN: Your Honor, I want to be candid.  
14 At least to Local 15 on the basis of the order submitted  
15 here I don't see any prospect of a settlement. All it  
16 does is codify their discrimination practices. It is  
17 a repeat of what they are doing now.

18 THE COURT: I am saying if something can be  
19 worked out, all right. If it can't, then in substance  
20 I will have to go along with the Government's order.

21 Let me cover the things I have to cover and  
22 then we can come back to whatever matters you want to  
23 put on the record.

24 15(a). Seven days seems to me too short  
25 a time. I would change it to 15 days on (a).

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Paragraph 15(a) provides under the conditions for the admission of nonwhites: "Work on a job within any union's trade and geographic jurisdiction with a union contractor or contractors for any combination of seven days ..." I would change that to 15 days.

MR. DEVORKIN: That would also change paragraph 16.

THE COURT: That is right.

MR. O'HARA: Do you want me to speak to that?

THE COURT: All right.

MR. O'HARA: Your Honor, the machinery for determining the competence of operating a complicated piece of machinery is suggested again in our order and we have a serious question as to whether being in the employ of a contractor for seven days would be any measure of the competence of any individual. We have no history in Local 14 of having ever determined the competence of an operator after seven days on a job.

I would suggest to your Honor that a review of some of the major equipment that is operated by Local 14 members, long boom cranes here in mid-Manhattan, et cetera, would serve absolutely no purpose.

Also, I can't imagine from the Government's viewpoint what purpose it would serve. I don't know

how anyone who previously had no qualifications could come in and start instantly, by some intuitive knowledge, to operate this equipment.

If some contractor were compelled by some rule or regulation or whatever it might be to put somebody on a standby basis on his payroll, you would wind up with a result that this individual would then be a union member totally unqualified to operate all of the machinery within the jurisdiction of the local.

I think in the first instance from the Government's viewpoint --

THE COURT: They could operate some of the machinery within the jurisdiction of the local or a piece of machinery within the jurisdiction of the local.

MR. O'HARA: I can't imagine what piece that would be, your Honor. Most of the equipment in the industry requires a license from the City of New York, as you know, which requires experience and testing. These requirements were not set by this local, they were set for the City of New York for the safety of the operation and the safety of the people of the City of New York. So he would automatically be excluded from that whole category, which is the major portion.

I think the findings of fact indicate it is



2 75 to 90 per cent of the total work available to the  
3 Local 14 members.

4 So setting up a system of taking a fellow into  
5 the union and then telling him that he was limited to  
6 10 per cent employment units in the union would be unfair  
7 to the individual, I think it would be unfair to the  
8 local, I think it would be unfair to the contractor to  
9 whom we would send this man for employment, and I find no  
10 basis in the background in this case or the background  
11 of these locals to warrant it. I think what they have done  
12 is taken the authority a local has to compel a man to  
13 join after seven days in the construction industry and  
14 turned it around to use it against the union.

15 I don't think it serves any purpose in this kind  
16 of litigation. I think it shows a totally unrealistic  
17 grasp of employment, of the requirements for competency  
18 and for honesty to the man you are purporting to help.

19 MR. BRADY: We agree with those comments, your  
20 Honor, and state that the proposed order of both unions  
21 have made provision for the testing of a person who thinks  
22 he is qualified and we would have a job-related test,  
23 an approved test, administered by outside agencies.

24 If you do have that, you do work up situations  
25 where someone can come in and establish he has worked in



2 the industry for the requisite amount of time but,  
3 indeed, he will not be qualified. We want to test mechanics,  
4 we want to qualify all these people.

5 What we would have, rather, would be an overflowing  
6 of people who simply would be a danger to themselves and  
7 to others on the job sites.

8 THE COURT: You mean you think there are that many  
9 of them who have worked for 15 days with a contractor in  
10 this jurisdiction?

11 MR. BRADY: There probably wouldn't be a great  
12 number of them. Nevertheless, I don't think that the  
13 order should provide for the influx of people who cannot  
14 prove themselves to be qualified.

15 MR. O'HARA: One further point before the  
16 Government closes.

17 Let's take the case of a trainee as might be  
18 provided by the New York Plan or any other of the similar  
19 plans operated here in New York. There are specific  
20 provisions in some of the contracts when awarded that you  
21 have to have X number of trainees on the job site. In order  
22 to meet this, you get a classic standby situation. The  
23 employer is getting paid under the contract for employing  
24 the trainees, so he employs them and he meets the  
25 mathematical requirement. This fellow comes and stands

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2 sometimes in close proximity, sometimes not in close  
3 proximity to the operation as it is going on. That is  
4 the total scope of his function. He does this for the  
5 amount of time to satisfy the requirement of the contract  
6 and then he is let go.

7 To attempt to --

8 THE COURT: Maybe we should have some hearings  
9 about the contractors and what they are doing.

10 MR. DEVORKIN: That is the most incredible  
11 statement I have ever heard in this case. It is a  
12 concession that the unions never did a darn thing for  
13 the trainees they were supposed to be training in the  
14 New York Plan.

15 Your Honor found --

16 MR. O'HARA: The union is not commenting on it.

17 MR. DEVORKIN: Why comment on it? It is not  
18 pertinent to this case.

19 MR. O'HARA: I give you a classic case of what  
20 can transpire.

21 THE COURT: If this is what the contractors are  
22 doing --

23 MR. BRADY: As you know, Local 15 has had the  
24 New York Plan trainees. Numbers have been granted union  
25 books through that plan and we are ready now -- I

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think we have somewhere from 90 to 100 who are about to become members through that source. However, paragraph 16 would say any New York Plan trainee if he was on that job for two weeks or three weeks would automatically become a member. As a matter of fact, that would be under the provision of 15 as well.

Certainly they are not going to be qualified. Any apprentice training plan has a period of time involved and has a testing qualification and this would just fly in the face of any other orders I have ever seen in this area where a man can simply be on a job in a trainee status or any other status and obtain union membership.

The way to do it is as we proposed, testing those who claim to be qualified and on-the-job training.

THE COURT: Mr. Brady, I have heard a great deal about the training. I mean in the past. During the course of the trial I heard a great deal about the training, the length of time it took and how successful it was.

MR. BRADY: We have proposed formalized training and we proposed testing from outside sources. Certainly I don't think you are answering the problem by permitting a man to obtain membership by just being on the job in some status for 15 days.



2 MR. DEVORKIN: It is something that Local 15  
3 proposes as its referral system one key element that the  
4 employer shall determine whether the man is qualified or  
5 not. If the employer says he is qualified to do the job,  
6 that's good enough for us.

7 So they are willing to let people be referred  
8 and if the employer is satisfied that's okay by them,  
9 but they are not willing to let the same man get into  
10 their union.

11 Your Honor also found a large number of the  
12 jobs in this industry were unskilled or semi-skilled  
13 work and that whites traditionally had gotten into the  
14 unions, be qualified on one piece of equipment or  
15 no pieces of equipment after two or three weeks on the  
16 job.

17 All we are doing is giving the minorities what  
18 the whites have gotten all along.

19 THE COURT: I am not sure of 15(a). What do  
20 you mean there? You set up various experience criteria  
21 or completion of programs or transfers. What is (a),  
22 organization of nonunion shops?

23 MR. DEVORKIN: All we meant to do there was  
24 to allow the traditional right of the union to continue  
25 organizing the industry if there are opportunities to do



that so that if the unions sign up --

THE COURT: You say, "The union shall admit nonwhites to membership in the unions, or branches thereof, if the nonwhite applicant meets any of the following conditions."

What is this condition he meets, organization of nonunion shops.

MR. DEVORKIN: It probably should read, your Honor, "Employment in a nonunion shop which is organized."

Something to that effect. Organization of a nonunion shop represented by the union.

THE COURT: That makes sense. "Thereafter organized by the union."

MR. DEVORKIN: Yes.

THE COURT: On page 10, paragraph 1, it says, "However, the improper denial of membership to such applicants will result in all initial membership fees being waived for said applicant."

That is not to be mandatory. I leave that to the discretion of the administrator, if we have an administrator.

MR. O'HARA: If your Honor please, may we suggest it not be left to the discretion of the administrator and not be waived. If after a fair proceeding it is determine that a man has a right to access to the union,

1 I think he should be made to meet all of the financial  
2 obligations of every other member. If the denial was  
3 wrongful and in violation of your order, then there ought  
4 to be a proceeding to punish for contempt with any  
5 appropriate remedies for contempt that may be imposed.  
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7 But to do more than provide a prospective candidate  
8 with his full rights I think further points up the inherent  
9 harshness of this order.

10 MR. DEVORKIN: From our point of view, it just  
11 meant to try to make the order as self-enforcing as possible.  
12 This is a kind of self-liquidating damage where the parties  
13 don't come back to the Court.

14 THE COURT: I would rather have them come back  
15 to the Court.

16 21, "There shall be no limitations on the  
17 number of times an applicant applies for union membership."

18 I would certainly say you would have to set  
19 some time periods there and say there shall be no limitation  
20 on the number of times an applicant applies for union  
21 membership except that no applicant may apply more than  
22 once within a six month period, something like that.  
23 Otherwise you would just have a series of applications being  
24 made that some action will have to be taken on even  
25 though a person is not entitled to apply.

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MR. DEVORKIN: The only thing, your Honor, is that six months might be long.

THE COURT: Make it three months, some period.

MR. DEVORKIN: Three months would be more suitable. We are trying to allow for the situation where a man doesn't pass his test and then does improve himself and does pass the test.

THE COURT: It would probably be three months.

There are some typographical errors. Page 13, second line from the end of 26.

"It shall be made after having duly considered the financial circumstances."

The word "after" was left out.

The only other one I had was 49 where I made a change. I changed the five months to three months there.

MR. BRADY: Excuse me, your Honor. 49?

THE COURT: Yes. I changed the five months to three months. I changed it to two months but on a similar one I had two but I changed it to three.

The Government's plan or order does not, in paragraph 46, create proposals for the administration of a practical test. I am concerned that the test be fair to the minorities but also that we are going to have a



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2 safe operation of heavy equipment, and I know one of  
3 the proposals was to set up a board rather than leaving  
4 it to the administrator and tying it right into the order  
5 so I would have a little assurance that the test that  
6 would be given would be a meaningful test on various  
7 equipment.

8 I am thinking more of the more complicated  
9 equipment. I am not thinking of tests on some of the  
10 lighter equipment.

11 MR. DEVORKIN: It was the Government's --

12 THE COURT: They are going to have to validate  
13 it under the standards, of course.

14 MR. DEVORKIN: That would include --

15 THE COURT: I had some question about leaving  
16 it up to the administrator, if we have an administrator.  
17 He is probably not going to be an operating engineer or  
18 an engineer.

19 MR. DEVORKIN: I agree, your Honor. It was our  
20 thought --

21 THE COURT: I think that is a crucial part of  
22 the plan.

23 MR. DEVORKIN: I agree with your Honor. It  
24 was our thought that the unions would submit their  
25 proposal --

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2 THE COURT: Why don't they do it now if they  
3 already have. They have come up with a board consisting  
4 of some professor from Columbia and I think somebody  
5 from Stevens Institute.

6 MR. O'HARA: And some from the industry.

7 THE COURT: And somebody else. I don't say  
8 that that is what it should be, but I think probably  
9 we should have something written into the order and not  
10 just leave it up to the administrator, recognizing that  
11 this is going to have to meet the approved standards.

12 MR. DEVORKIN: As to a board or a body, an  
13 examining board, such as the union proposed, we have no  
14 objection to that principle. We think that the board  
15 has to be ultimately responsible to the administrator  
16 first and then obviously to the Court, and in addition  
17 to guidelines such as validating the test under EEOC  
18 procedures, that we have to be careful, as we have here,  
19 to make sure that this is not used to impose higher  
20 standards than have previously existed in the past and  
21 that of course would be a factor that the administrator  
22 could evaluate depending on the submissions of any board.

23 In theory we have no objection to a board  
24 such as that proposing a test to the administrator or, for  
25 that matter, actually administering the test themselves.

THE COURT: You may want to discuss that with the unions. Maybe you can work out a provision on that.

MR. GALLAGHER: Your Honor, in that respect, there is a great deal of exposure here for the contractors whose equipment is being used.

THE COURT: I say I am concerned about safety matters.

MR. GALLAGHER: That is correct. It is safety for the public and it is also our investment we want protected. We should have a voice in those tests.

THE COURT: As long as they comply with the standards that are set. I don't think anybody wants to dilute the value of these tests but they don't want, by the same token, to have them used to exclude people from operating machinery other than cranes and other heavy equipment. If they can be validated, that is all the Government can ask, it is all anybody can ask. All I am saying is why don't we write something into the order itself other than just leaving it up in the air so far as the administrator is concerned. After all, that is what the unions themselves suggested. I don't think we are at loggerheads about that.

MR. DEVORKIN: I agree. I think we can work some language out. I think we have some means of selecting

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the members of the board.

THE COURT: We can leave it to the administrator to select the people for the board. We might give him a little assistance and tell him where to select them from.

MR. DEVORKIN: That is what I was about to suggest, perhaps using the suggestion of Local 14 but having the administrator picking the faculty he wants and leaving the unions to pick the other individual. We would like to see the board operate within the pervue of the administrator so he supervises it.

THE COURT: I don't think you will get anybody to be an administrator if he doesn't have some voice in selecting the people that are going to be performing an important function, namely, of getting tests that can be validated and which are fair to all concerned.

MR. DEVORKIN: I think we can do that.

THE COURT: Where do we go from here?

MR. DEVORKIN: I have three very minor additions, your Honor. One is typographical and two are not substantive changes.

On page 21, I think subparagraph 4(i), it has to have these words added before the word "shall". The words are "those present in the hiring hall."

MR. O'HARA: What paragraph?



MR. DEVORKIN: 4(i).

And I believe on page 15 in subparagraph 7 under "Qualifications," add a qualification for an oiler, perhaps designated by the letter O.

THE COURT: You have O for operating engineer.

MR. DEVORKIN: I was going to change that O on page 16 to OE.

There is a reference in the order at a particular point to referral of oilers, and I think it is necessary to make the other complete that it appear here also.

Finally, I would suggest that at page 24 in paragraph 40 to put a provision in that the rules and procedures should also be mailed to all union contractors and posted on all job sites. I don't really care whether it is the union that sends the rules and procedures out to the union contractors or the contractor's association that does that.

THE COURT: If you want to give me some language for the --

MR. DEVORKIN: To be simple, it could be that the union shall mail -- perhaps we can do it this way:

After the word "and" in the third line from the bottom of paragraph 40 we can put in "to all union contractors."

THE COURT: The union shall mail a copy of these



2 rules and procedures to every person who is registered  
3 at the hiring hall, to all union members, to all contractors.

4 MR. DEVORKIN: I would say "union contractors."

5 THE COURT: And --

6 MR. DEVORKIN: "That at all times one copy shall  
7 be posted," and go on to the end of the sentence, "at  
8 the hiring hall and at all job sites."

9 THE COURT: These are just suggestions. I  
10 would appreciate it if you could sit down and see what  
11 portions can be agreed on between the parties and what  
12 portions can be initially simplified and then let me know  
13 just as soon as you can because I certainly want to have  
14 something in operation I hoped by the end of this month  
15 but I can see it probably will be late into August.

16 I would like it moved along and if I can't do  
17 that, then the only thing I can do is, with the changes  
18 I have already discussed, to sign the Government's proposed  
19 order with the changes that I have already indicated. I  
20 am still not convinced that we should include pensioners.  
21 I lean to the appointment of an administrator not for the  
22 purpose or with the idea of punishing or degrading the  
23 unions or anything like that, but just to avoid having  
24 these things come back to the Court so that the Court is  
25 just completely swamped with a load of minutia.

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2 MR. DEVORKIN: May I respond to the administrator  
3 point? I haven't spoken to it.

4 THE COURT: Of course, it has been done --

5 MR. DEVORKIN: In numerous cases. I have talked  
6 to the judges who have done it and it hasn't been an  
7 onerous thing so far as the unions are concerned.

8 MR. DEVORKIN: I think that is correct. Judge  
9 Frankel has an administrator in Local 46, Judge Bonsal  
10 has one in 638, Judge Werker has one in Local 28,  
11 all construction industry cases, with similar patterns and  
12 practices and complicated factual situations. There  
13 are cases where we have settled with unions and have an  
14 administrator in force and I know from personal experience  
15 if there weren't an administrator the Court would be  
16 spending full time deciding disputes between the parties. It  
17 is an impossible enough task for an administrator to  
18 do that successfully let alone the Court doing it.

19 THE COURT: Perhaps I am too optimistic to hope  
20 there might be some agreement on some of these things,  
21 but, in any event, give it a try. Then if it doesn't work  
22 out I will just have to go ahead with what I have got.

23 MR. O'HARA: If your Honor please, specifically  
24 on the point raised by the Government, I think they will  
25 concede that the 46 case was a contempt situation.

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MR. DEVORKIN: No, I won't concede that.

There was a contempt matter but it was based --

THE COURT: I don't think it was true in Judge Bonsal's case.

MR. O'HARA: In the 63 case it was not but it was in the 28. Two of the three cases were aggravated situations which we don't have here.

Generally, also we have no administrator in the Ironworkers Local 46 and we haven't been back to the Court yet with any problem. That program has been working successfully for four years.

THE COURT: See if you can work it out. I am not necessarily sold on an administrator. I just know that the judges who have administrators are glad that they have administrators.

MR. DEVORKIN: In the Local 40 case the Government got no relief and there wasn't a need for an administrator. The Government's relief in that case is minimum. It didn't prove the case it proved here and there was nothing for an administrator to do. The decrease was minimal and self-enforcing.

MR. O'HARA: I don't want to haggle with you but you are really quite inaccurate.

MR. DEVORKIN: I will give Judge Tenney a copy

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of the Local 40 order and compare it to this order. It  
was very minimal to what we asked for and what we propose  
here.

THE COURT: Let's not try other cases.

MR. O'HARA: We also have a procedural problem  
again. It was my understanding that if we had any other  
problems with the Government order we ought to raise them  
now. I know I have a significant number of other problems  
with the Government's order. I think Mr. Brady has some  
and Mr. Gallagher has some and I don't know about the  
other attorney.

Should we now address ourselves to this or do  
you want to fix another time or some other forum or do  
you want us to team to resolve it and then come back  
and address ourselves to this.

THE COURT: See which ones you can resolve  
and then let me know. I will be away after this week for  
two weeks. Then I will be back and I will be around.

MR. O'HARA: We will reserve our right failing  
an agreement with the Government to be heard.

THE COURT: I am not signing any order until  
I get some further information from you gentlemen. So  
you will have an opportunity to be on record as to what  
you object to and all that even if you do it by letter

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to me pointing out what portions of the order you object to. I would hope you might be able to sit down and come to some agreement with the Government on this so that we might be able to do with a shorter order.

MR. DEVORKIN: Your Honor, the Government would like to do that also. I would like to do this today and notify the Court today because if at all possible --

THE COURT: I would be glad to sit down with you again after lunch today.

MR. O'HARA: If your Honor please, I have a problem. I am substituting for someone here today.

THE COURT: But you are doing very well.

MR. O'HARA: Mr. Gallagher has someone in his he wants to join with him on it. While there is a need for haste the case is four years old I don't think we have to do it this afternoon.

THE COURT: I didn't say that. I said I would be available this afternoon if we wanted to continue this particular meeting but I think that if you can have some conference with the Government before you write me a letter saying all of these things are objectionable to you, some of them the Government may agree to.

MR. DEVORKIN: I am not going to be available very shortly. So if the parties want to meet they will

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have to do it soon. They have had our order for a month  
already. I know I get calls every day from people that  
they are still suffering the same discrimination.

Is your Honor ruling out the possibility of  
signing an order before you leave?

THE COURT: No.

MR. DEVORKIN: Maybe it is premature, but if  
that does come up as a reality, would your Honor indicate  
at that time whether or not a stay would be entertained  
because in your absence there might be a motion with the  
Court of Appeals and I don't know what posture the case would  
be in.

THE COURT: Yes, I will indicate.

MR. O'HARA: We are now told by the Government  
it has to be this afternoon or there can be no  
discussions. I find that unreasonable. I really do.

MR. DEVORKIN: We came here prepared for everybody  
to state their position on this order. Why can't they  
state it to me?

THE COURT: We will meet back at 2:00 o'clock  
and maybe we can get as much as possible on the record and  
I will make up my mind what to do.

(Luncheon recess.)

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## AFTERNOON SESSION

2:00 p.m.

MR. DEVORKIN: Your Honor, might I follow up on one thing which was raised this morning. I made some inquiries at the lunch hour. I want to inform your Honor in the Local 28 case before Judge Werker we had the same situation with respect to defendant General Contractors Association being only named as a party for relief, not as to liability, and the issue came up before Judge Werker about whether the General Contractors Association ought to be permanently enjoined and they are enjoined permanently in Judge Werker's final order and I believe Judge Werker made the comment at the time they were discussing the order as we are here today that the order simply wouldn't work without the defendants being enjoined.

I believe, but I can't categorically state, that is also the case in Local 638.

THE COURT: Is that Judge Bonsal?

MR. DEVORKIN: I believe so.

THE COURT: I will talk to Judge Bonsal and Judge Werker.

MR. DEVORKIN: As to the examining board, I have been thinking about that. Right now, I would like

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to get your Honor's reaction. I was leaning towards the concept that Judge Werker incorporated in the Local 28 case. I am not sure whether it meets your Honor's criterion, but that proposal would be that there shall be an examining board comprised of one member chosen by the plaintiff, one member chosen by the defendant and one member chosen by the administrator and the examining board shall submit, and then we adopt the language that continues in paragraph 46 with the one addition that the expenses, if any, of those members of the examining board shall be paid by the defendant unions.

THE COURT: I think that would do it.

MR. DEVORKIN: I can send that in the form of a letter to your Honor or I have ordered the transcript and it is on the record now.

MR. O'HARA: We would like to suggest to your Honor the proposed counterorder has something that calls for the creation of an examining board. I suggest that language.

THE COURT: That is the one that mentions Stevens Institute and Columbia?

MR. O'HARA: Yes. It also distributes the Court's impact differently than suggested by the United States Government.



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2 is now the law, we are not supposed to break the law,  
3 the law is there.

4 THE COURT: But you don't want to agree not  
5 to break the law.

6 MR. GALLAGHER: It is an overkill. The law is  
7 there. We are supposed to obey it. We haven't done  
8 anything and we are being enjoined from not doing what we  
9 didn't do before and it is saying the same thing that the  
10 law says we are not supposed to do.

11 THE COURT: I don't know whether you did it  
12 before or not because there was certainly no exculpation  
13 of the industry, in my opinion. It was excluded. Okay.

14 MR. DEVORKIN: I don't know how to respond --

15 THE COURT: I will talk to Judge Bonsal and Judge  
16 Werker.

17 MR. DEVORKIN: If it were necessary to seek  
18 a judgment of liability against the contractors, we are  
19 prepared to do that. We proved at the trial acquiescence  
20 and practice had the same effect. If we had to get a  
21 judgment of liability against the contractors we would  
22 be prepared to go through depositions and discovery  
23 and a trial for that purpose, but I don't think it is  
24 necessary. They are not being held financially accountable  
25 for anything that has happened here. They are just being

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1 THE COURT: It is charged to the Equal Employment--

2 MR. O'HARA: Charge one to the union, one  
3 to the employers and one to be paid for out of the fees  
4 generated by the testing of prospective applicants.  
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6 MR. DEVORKIN: The Government has no position on  
7 whether or not the employers pay a portion of that cost.  
8 We are not going to ask your Honor to order that the  
9 employers bear that cost. If the employers want to agree  
10 with the unions to do that, fine. However, we don't think  
11 there ought to be a fee imposed upon applicants to take  
12 that test. There has never been a fee in the past and  
13 we think during the running of this order at least there  
14 ought not be a fee.

15 One of the things the test is doing is correcting  
16 past mistakes and the cost of doing that ought not be  
17 borne by the minorities.

18 MR. BRADY: In order that we can draw a little  
19 closer together, I would adopt the position of Local 14 on  
20 that examining board as well. Perhaps we can get a little  
21 closer.

22 THE COURT: Fine.

23 MR. GALLAGHER: I am not clear on this matter  
24 of injunction. We start with the basic premise there is  
25 no contention of liability. If it is being enjoined what

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equitably ordered to insure that the union -- that this order works, to follow the terms of the order. They are an integral part of the industry and it is necessary to do that.

MR. GALLAGHER: I don't know whether Mr. Devorkin is being naive or sincere when he is saying we are not being called upon to pay anything in this situation. Whatever is charged as fees to the union is going to revolve around the contractors. That is the reality of life.

Whether this is a feigned lack of knowledge or sincere, I don't know.

THE COURT: It probably will be paid in higher rents, too. I don't know how far you can follow these things through.

MR. DEVORKIN: I won't comment on it.

THE COURT: You can follow the impact of this a long way.

MR. DEVORKIN: Sure. The union is going to have to come up with money to pay for this order. Whether that comes from its own treasury or it comes from its own members, if they are going to check off a higher percentage against the employers, that is not something in front of us. We are not asking the employers to pay up front for this order. They can agree to do anything they

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want.

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THE COURT: I know.

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MR. DEVORKIN: I just didn't use the specifics of the Local 14 order because on this short notice --

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THE COURT: I am inclined to agree one should be picked by the plaintiff, one should be picked by the defendant and one should be picked by the administrator and certainly if he wants to get professors or whoever, I would assume that the parties, having expressed at least on the part of the union, a desire for most safety, I am sure the Government does not have an interest in having a dangerous situation created and I am sure the administrator would be similarly motivated and they will pick competent people to prepare these tests, it can be calidated, and I am not sure there shouldn't be a nominal fee for taking these tests. I don't think it should be a high fee.

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MR. DEVORKIN: Nominal to the Government would be something in the order of \$10.

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THE COURT: Yes. There is paper work and stuff involved here. People don't know what is going to happen in the next two or three years industrywise or anything else like that, but it is not a thriving industry right now. I might suggest it is beating a dead horse.

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2 MR. GALLAGHER: May I have read back what  
3 your makeup of that board was? I didn't hear it.

4 THE COURT: What the Government had suggested  
5 was that it would be one person selected by the union,  
6 one person selected by the -- is this correct -- one  
7 selected by the union, one selected by the plaintiff and  
8 one selected by the administrator.

9 MR. DEVORKIN: We would be willing to have the  
10 defendants, plural, select that one and let the unions  
11 and the employers association agree on somebody and  
12 give the employers association a role in that. That  
13 would be fine with us.

14 The defendants or the unions select one.

15 THE COURT: The defendants as a whole. Maybe  
16 the contractors don't want to be -- well --

17 MR. DEVORKIN: The unions are proposing now that  
18 the employers select one person. That is their proposal.  
19 We would be happy to go along with that, too.

20 THE COURT: Instead of the unions?

21 MR. DEVORKIN: The only one on the table is  
22 Local 14's proposal. Besides the two faculty members,  
23 they submit that the employers association select the  
24 third member, and we would be willing to go along with  
25 that.

2 MR. O'HARA: We are supposing if two academicians  
3 and the representative from the employers association.

4 There would be no direct union representative.

5 To talk to that point, your Honor --

6 THE COURT: Let me clarify that. This three-  
7 man board, one would be appointed by the employers, one would  
8 be appointed by the plaintiff --

9 MR. O'HARA: No. What we are suggesting is one  
10 be selected from the engineering school of Columbia  
11 University. That is not a designee of anyone. That is  
12 the Court's designee, if you will. And another one  
13 be selected from Stevens Institute on the same basis, by  
14 reason of his qualifications as a professor.

15 THE COURT: One will be selected by the contractors,  
16 by the employers, the other two will be selected by the  
17 administrator, one from --

18 MR. O'HARA: That is not what we are saying.

19 THE COURT: That is what I am saying. One from  
20 Columbia and one from Stevens.

21 MR. O'HARA: Our problem --

22 THE COURT: You may have some particular person  
23 in mind. I want to be sure we have somebody completely  
24 impartial and I will let the administrator make the  
25 selection.

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2 MR. DEVORKIN: The employer should pick one, the  
3 administrator should pick one. I don't think you should  
4 pin him down about where he should come from, because  
5 the administrator should decide who best suits the needs  
6 that he has. I am sure the faculty members are fine  
7 gentlemen, but we don't know sitting here today whether  
8 an engineering professor at Columbia knows a darn thing  
9 about operating a back hoe.

10 THE COURT: The employers are always at liberty  
11 to pick a man from any place, Columbia or Stevens or  
12 whatever the case may be. That is their selection.

13 MR. DEVORKIN: That's right. I think the  
14 administrator should have the option to select somebody  
15 and on the other side the plaintiff should have the option  
16 to select somebody. The administrator picks that third  
17 person. These people in any event are responsible to  
18 the administrator for coming up with a satisfactory  
19 test that he makes sure is validated and ultimately  
20 everybody has recourse to the Court, though I don't think  
21 we would get that far.

22 I don't see any problem. We should leave enough  
23 discretion for the administrator and have the employers  
24 select one member of the board.

25 MR. O'HARA: This whole scheme of the Government

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2 presupposes an instant administrator. We spent a great  
3 deal of time this morning and we urge that position  
4 this afternoon whether we will have an administrator so  
5 it is hooked up with machinery that presumes his existence.  
6 That creates a problem.

7 THE COURT: You are going to have an administrator  
8 unless you can get together with the Government and work  
9 out some other satisfactory plan.

10 MR. O'HARA: Our proposal in Local 14's order  
11 doesn't require an administrator and the trouble with the  
12 administrator doing selecting is that I think there is a  
13 serious question as to how neutral an administrator would  
14 be since he is selected by the Court to carry out the  
15 terms of the Court's order. He has a specific job and  
16 function.

17 THE COURT: You are saying we should hamstring  
18 him by taking away the power --

19 MR. O'HARA: No. I am urging his nonappointment.  
20 I don't see any need for him. We are offering a perfectly  
21 viable plan which has worked for four years under the  
22 jurisdiction of this Court. Nobody has raised any objection  
23 to it.

24 We are saying that absent any special reason  
25 in this case it would be equally applicable here and we

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are willing to work towards it and work with it.

MR. DEVORKIN: If your Honor agrees that in the light of the hiring hall system that is going to be established hopefully and other things an administrator is superfluous, then I suppose perhaps for this one task he is not necessary either.

But an administrator is going to be doing a whole lot of other things, we submit, and this is central to his job if he is doing all these other things and he ought to be doing this also.

THE COURT: It seems to me this test, as I said this morning, is a very important factor in this whole thing and I think it is fair to let the plaintiff pick one, the defendants pick one, whether it be the industry or whether it be the union, and let the administrator pick the third, provide three will be selected, one by the plaintiff, one by the defendants, and one by the administrator.

MR. DEVORKIN: It would probably help all parties if your Honor told us to select one within 30 days or something like that, whatever it is.

THE COURT: I was just checking. The administrator I have in mind is not in the country at the present time and will not get back until the end of this week. So I

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2 don't think you will get an order this week.

3 MR. DEVORKIN: From whatever date the order goes  
4 into effect.

5 THE COURT: You were talking about wanting to  
6 get things through, which I was acting to do, but I can't  
7 bring a man back from the Far East.

8 MR. DEVORKIN: All I meant is if you include  
9 the provisions you have just enunciated on an examining  
10 board, that you instruct the parties to pick or get  
11 that examining board in place by a certain reasonable time  
12 after the entry of the order.

13 THE COURT: But that means I would think you  
14 might be able to get together on some of these points  
15 at least and have the benefit of some discussion among  
16 yourselves in the next day or so. Before lunch I had  
17 some expectation that I was going to sit down and talk  
18 to this gentleman this week and I wanted to have a pretty  
19 general idea of what the plan was going to be before  
20 I discuss it with him. But that doesn't seem like it is  
21 in the books at the moment.

22 It does give a little opportunity, maybe, for  
23 some consultation between the parties if you are interested  
24 in getting this thing under way.

25 MR. DEVORKIN: I am available today, as I said

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before. I assumed since your Honor was setting this discussion down for today all the parties are prepared to discuss the order. I am willing to discuss with the other side the order.

THE COURT: There may be specifics -- let me say this. If the parties can agree on a workable plan that embodies what is in the Government's plan with maybe some minor modifications without an appointment of an administrator, that is all right with me, although it may ultimately become necessary for me to appoint an administrator if things don't work out the way I think they should work out.

Now, basically I approve of the general scope of the Government's order with respect to the day room or hiring hall or whatever you call it, the procedures to be followed there, certainly initially and then made modifications. As time goes on it may not be necessary. I will leave it up to the administrator, if we have an administrator, but certainly initially there would be monitoring.

There may be other areas where also give and take between the parties might bear fruit. So maybe you want to do it this afternoon. I take it you can't do it except this afternoon. Is this afternoon the last time

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2 you are going to be able to do it?

3 MR. DEVORKIN: It is not the last time. I  
4 have a problem in that I am actively engaged in getting  
5 ready for a three-month trial. There are a lot of deadlines  
6 imposed by Judge Metzner. I am going out of town on business  
7 on that case at the end of the week.

8 THE COURT: You recognize my position, that I am  
9 not going to sign an order if there is going to be an ad-  
10 ministrator without having an opportunity to sit down and  
11 talk to the particular person, be sure that he is the  
12 sort of person that I want to have and to go over generally  
13 and ask him for maybe some suggestions. He is going to  
14 have to administer the men. Maybe he should be given  
15 some voice in advance so he doesn't have to come running  
16 to me for modifications of it all the time.

17 I am afraid what is going to happen is that if  
18 you can't get together on these things I am going to have  
19 to sign an order in pretty much the shape it is in now  
20 with maybe some slight modifications.

21 MR. DEVORKIN: I have reviewed the question of  
22 the administrator within our office fairly extensively  
23 and gone over our own experience in these cases on  
24 my own and given what happened here and given the nature  
25 of this industry, I don't see any circumstances under

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2 which the Government would accede to an agreement where  
3 there was no administrator.

4 THE COURT: So far as I am personally concerned,  
5 the plan that had any depth whatsoever would have to have  
6 an administrator because the only other thing to do would  
7 be to assign the case to a magistrate and have him continually  
8 conducting hearings. I have had to do that in the past and  
9 it is an imposition on a magistrate. It takes up a lot  
10 of valuable time.

11 By the same token, I don't like to saddle the  
12 unions with a lot of unnecessary expense. I think there  
13 should be at least a nominal fee charged for taking the  
14 test, \$10 or something like that. I don't know. I will  
15 take that up with the administrator and see what he  
16 thought or maybe give him the power to fix a fee not in  
17 excess of a certain amount.

18 MR. DEVORKIN: I think that would be all right.  
19 I can envision a situation where the fee that is set now  
20 after we got the system cranked up would exceed the cost  
21 of the test. The union is going to have to administer  
22 the test. The examining board isn't going to do that.

23 THE COURT: I know that. I am just saying to have  
24 a nominal fee.

25 MR. DEVORKIN: We don't oppose that.

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THE COURT: No matter who it is, if they take a test and it is free, I think it adds a little more dignity to the test itself to have some nominal fee to cover some of the expense of it.

MR. DEVORKIN: That is fine, your Honor.

MR. O'HARA: Your Honor, on the presumption that it now becomes apparent that there will be an administrator selected, I would like to talk --

THE COURT: It would seem so from what the Government says.

MR. O'HARA: I continue to oppose that position. If the Government's position would prevail, I would like to talk to the selection of the administrator.

First, I think it should be someone who has had some experience in the labor relations field and understands the operation and the interaction of unions and employers as well as the minority problem because --

THE COURT: I am open to nominations and suggestion from all of the parties.

MR. O'HARA: What I would suggest, your Honor, rather than specific individuals, since I don't feel competent to comment on specific individuals, I would suggest the consultation by the Court either with the direction of counsel to contact him and contact the American

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Arbitration Association which is the standard provider of mediators, arbitrators and umpires and the like from within the labor field. At least you would get a panel of people provided by them who are knowledgeable and familiar with the field and the industry.

THE COURT: I repeat what I said before, that all the parties are at liberty to suggest the names of anybody that they think would be suitable as an administrator.

The Government has made their suggestion. There is certainly no reason why the unions or the contractors can't do the same with a statement of the particular individual they want to suggest, whether they obtain that individual from the American Arbitration Society or wherever.

MR. O'HARA: So you have no objection to us contacting the American Arbitration Association.

THE COURT: I say I have no objection and I would welcome the names of other people than suggested by the Government.

MR. O'HARA: Thank you, your Honor.

THE COURT: Is there anything we can accomplish now? What you might do, if you have the time, since I have not had the benefit of your thoughts until today other than in the form of suggested counterorders, if

2 you would direct yourself to what you would find to be  
3 extremely objectionable or unworkable or the like in the  
4 Government's proposed order and if you could put it in  
5 writing and send it to me, I will give it my serious  
6 consideration.

7 I question whether we need to sit around here any  
8 further today. I thought before lunch the whole thing  
9 seemed to be breaking up with a non sequitur and I was  
10 a little anxious to move this thing along.

11 MR. GALLAGHER: Your Honor, I would like to  
12 make a statement for the record, that by the appearance  
13 here on behalf of General Contractors Association of  
14 New York, Inc. we did not intend to waive any rights  
15 our client had as to this being an appropriate method  
16 of resolving the relief which was not tried.

17 THE COURT: This is what you said this morning.

18 MR. GALLAGHER: Your Honor, I don't think I made  
19 it that clear but I want it perfectly clear.

20 THE COURT: You made it clear to me but you have  
21 it on the record again.

22 MR. DEVORKIN: Would your Honor set a time deadline  
23 for the filing of objections?

24 THE COURT: Yes. I would like to have them  
25 this week, before the end of the week.



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MR. O'HARA: 14 would like to preserve the same rights as Mr. Gallagher did.

THE COURT: You always have your rights to appeal. When you appeal you can take these things up at that time. Thank you, gentlemen.

(Adjourned.)

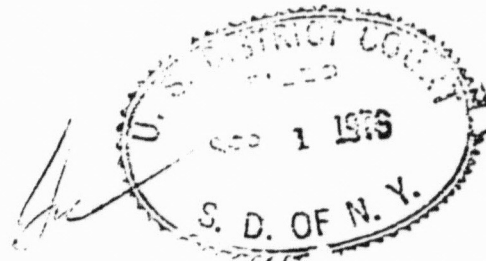
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July 22, 1976

Hon. Charles H. Tenney  
United States District Judge  
United States Court House  
Foley Square  
New York, New York 1000



RE: Equal Employment Opportunity Commission,  
-against- Local 14, International Union  
Of Operating Engineers, et al  
72 Civ. 2498 (C.H.T.)  
(Our File #11697)

Dear Judge Tenney:

Pursuant to your Honor's direction at the close of the Hearing held on July 26, 1976, I have set forth below objections to the Government's proposed Order which, of course, are in addition to all objections raised at the said Hearing.

LOCAL 15 further objects to the following items in the Government's proposed Order:

Paragraph 3 on page 3 requires the administration of a test every two months. This requirement is too broad particularly in the present economic conditions. The Order of Local 15 proposes testing every year. This would be more than sufficient to provide entry into the Union for qualified applicants and more consistent with orders entered involving other construction unions.

Paragraph 15 (a), page 9 and Paragraph 16, page 9. These provisions would admit any non-white who has worked on any job within the Union's jurisdiction for any combination of seven days to immediately gain membership in the Union.

The practical effect would be to open admission to the union to individuals who may not be properly qualified. Individuals employed under the New York Plan generally have no experience in the construction industry and would certainly not be qualified for Union membership. Certain individuals might have obtained employment totalling seven days, or a lesser day, as suggested by your Honor over a number of years and may, in fact, have been fired for incompetency from each job.

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**BEST COPY AVAILABLE**

Mr. Charles B. Taylor  
United States District Judge  
1000 - 11 - Court St., 1001st St.  
(1000 St., 1001st)

July 29, 1976

It is not fair to the other job members, the union or the individuals themselves, to permit an unqualified man to pay initiation fee, pay dues and then remain unable to work due to his lack of qualifications.

The Union proposes tests validated pursuant to E.E.O.C. guidelines for any applicant for any type of work under the Union's jurisdiction. We believe that to be the most practical and realistic method to follow, a method which would assure that the employer receives qualified employees and which would also assure that the individual will be able to be successfully referred for employment.

Paragraph 17, page 10 should also be amended to require that an individual with the requisite experience be tested for the reasons stated in the preceding paragraph.

Paragraph 23 on page 12, Paragraph 26 on page 12 and Paragraph 27(a) on page 13 should be deleted; all new members should be required to pay the same initiation fee; anything else would be discriminatory.

Paragraph 30 on page 14 suggests one Master Eligibility List for referral to employment. This is a procedure which would be unworkable and causative of confusion and inefficiency. The jurisdiction of Local Union 14 and 15 is separate and distinct. The Business Representatives of one of the Locals would not be familiar with the requirements of the other within the other Local's jurisdiction.

No Local purpose would be served by having one referral list, therefore the attendant confusion and inefficiency is not warranted.

Paragraph 32 on pages 17 and 18 contains a requirement that all applicants for referral be personally present at the Referral Hall. As suggested in paragraph 11's proposed order due to the fact that many individuals using the Union facilities for referral have not worked in a long period of time and hence, therefore, afford daily transportation costs to the Referral Hall. It is suggested that for the period of the economic recession now in effect in the country, that men be permitted to telephone to the Hall.

Paragraph 33 of the proposed order of the Plaintiff also contains reference to suburban jobs. This reference is further clarified in Paragraph 33 (b) 4.(1). This manner of handling "suburban job referrals" has no valid purpose and would only cause confusion. There is no reason to treat any job referrals in any different fashion. The purpose of the Government's proposed Order in this regard is unclear and requires further explanation.

Re: Hon. Charles H. Wesley  
United States District Judge  
U.S. v. Local 14, 15 and 28  
(1976-1977)

July 29, 1976

Pages 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 are completely beyond the scope of your Honor's opinion and finding of fact and we seriously doubt that the Court has the present authority to assign the jurisdiction of work from one Union to another. The provisions in question would require a "Crane Training List" be maintained by the Unions consisting of all non-white workmen seeking training as a hoist operator with New York City license. The provisions would permit the assigning of a person who would be under the jurisdiction of Local 14 to a Local 15 job, that is, the job of an Oiler. These provisions are designed to correct the past practices of Local 14 but takes jobs and jurisdictions away from Local 15 for the jobs in question would be the training of licensed crane operators within the jurisdiction of Local 14 while the job of an Oiler is within the jurisdiction of Local 15.

As the Trial record and Findings of Fact show, Local 15 has made a good faith effort at affirmative action which is not matched by our sister Local Union. It would not be appropriate to assign Local 14 personnel to Local 15 jurisdiction and, in fact, take jurisdiction from Local 15 in order to remedy Local 14's situation. Moreover, this is surely the type of reverse discrimination criticized by the Court of Appeals of this Circuit in the Local 28 case and in Chance v. the Board of Examiners, for an identifiable person, i.e. an oiler, within the jurisdiction of Local 15, will be denied a job while a person from an entirely different Union is assigned to that job.

Local 15's proposed Order has suggested a formalized proved training program which will satisfy the requirements of the E.E.O.C. The provision contained in Exhibit 42 on page 25 of the Government's proposed Order that a minimum of 100 minority operators graduate every calendar year is surely too large a number, particularly with the discrimination industry is in present condition. Moreover, an effective Apprentice Training Plan must provide for on-the-job training and it is questionable that 100 minority operators could obtain such training. It will be for better or ill and a requirement of this nature and demand the new plant authorities who oversee the Apprentice Training Plan to ensure that the plan is working effectively.



July 22, 1956

...provision for placement  
...of Local 15 and Local 14.  
...should be undergone which will  
...of the equipment within the Union's juris-  
...which would also prepare other men for other skills such  
...of a Mechanic or Carpenter Engineer and Welder. The suggestion  
...for an overall formalized training plan would better suit  
...the needs of the trades, the Union and the Industry.

As your Honor was advised in Court, Local 15 supports the proposal  
contained in the proposed Order of Local 14 for a three man Examining  
Board consisting of a representative from Columbia University, one  
from Stevens Institute of Technology and one from the Industry.

We again urge on the Court the arguments raised at the Hearing that a  
remedial social goal and the appointment of an Administrator are not  
warranted in this case. No egregious past pattern of discrimination has  
been proven but rather the Government has relied upon statistical  
inference to prove their prima facie case. An Administrator would not  
be required and is not required until it is proven that the Unions are  
not in compliance with whatever Order your Honor signs.

Respectfully submitted,

CORCORAN AND BRADY

ROBERT D. BRADY

100:bvn

100:bvn

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July 30, 1976

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Honorable Charles H. Tenney  
United States District Judge  
United States Courthouse - Room 1904  
Foley Square  
New York, New York 10007

Re: E.E.O.C. v. Local 14, International Union  
of Operating Engineers, et al., 72 Civ. 4278

Dear Judge Tenney:

In pursuance of the directive by the Court that objections to the United States Attorney's proposed order in this matter be submitted in writing by Friday, July 30, 1976, the objections are as follows: References are to the paragraph numbers of the proposed order. Some objections have previously been noted on the record of the proceedings of July 26, 1976. These objections are renewed here as if fully set forth.

(1) As to paragraph 6(b), in attempting to set any goal it is suggested that with administrative appointments, testing, etc., a full calendar year is not available from 7/1/76. Consequently, the initial goal is too high especially in view of the fact that the program would be starting from scratch. Accordingly, the suggestion is to reduce the first year goal to 6% and move the timetable back through 8/1/82.

(2) As to 6(c), this is a most important issue, i.e., the inclusion or exclusion from the total membership of two classes of members from such total, (i) the retirees and (ii) the City employees. As to the retirees, these men cannot realistically be included in the work force so long as they are collecting pension benefits from the affiliated Pension Fund.

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If they are working they are not given pension benefits and would not therefore be "retirees." It is only then that such "retirees" could be part of the work force or labor force. Moreover, all of the statistics used by the United States Attorney's office were based on the active labor force. These statistics were adopted by the Court. To now substantially alter the absolute number by changing the basis of the computation would be overreaching.

As to the City employees, these men have Civil Service status. They are hired through that selection process. They do not use the referral hall and the composition of that group cannot be altered except by the operation of the Civil Service Law. Further, they are not covered by the collective bargaining agreements between the Employers and the Union, but rather compensation is set pursuant to Sec. 220 of the New York State Labor Law.

Further, there is provided in 6(c) that the Administrator is to "take such action as he is empowered to take under this order to assure achievement." This in effect makes what is stated as a goal a quota and patently illegal and the last sentence of this paragraph should be stricken.

(3) As to paragraph 7, there is no demonstrable need for an administrator. All of the needs are met by the appropriate provision of Local 14's proposed order in a much more rational manner. There is no evidence or finding of fact that any individual was discriminatorily treated by Local 14 as to employment or membership. Certainly, if an Administrator is deemed necessary, there is no reason why an impartial Administrator cannot be appointed, i.e., someone not affiliated with the Government or with the Unions.

(4) As to paragraph 8, the powers are too broad and too vague, viz.: 8(a) - "increase" frequency of tests - No schedule presently exists nor is fixed by this order. Why increase frequency, unless, of course, the Government is attempting to substitute quotas for goals.

8(b) - "devise additional methods" - Why not utilize the existing methods and see if they work?

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8(c) - Under this paragraph the Administrator can ask for any number of reports in unlimited detail as to any aspect of Union business, including those that have no bearing upon Civil Rights.

8(d) - The requirement to review all applications is non-productive and costly to the Unions. A review of a contested determination of rejection should be adequate.

8(f) - This paragraph provides for a second tier of administration and is totally unnecessary. The administrator should hear complaints solely as to discriminatory admissions practices and discriminatory hiring practices.

(5) As to 9(a), the administrator should not commence any action on his own initiative but respond to complaints. Finally, the decisions of the administrator should be stayed pending an appeal filed within the ten-day period.

(6) As to paragraph 11, the reports are too frequent to be meaningful and too broad so as to be burdensome on the Administrator and the Unions, as well as an unreasonable and unnecessary expense.

(7) As to paragraph 15(d), fifteen days is not a sufficient period within which to train to proficiency an Operating Engineer on the work within the jurisdiction of Local 14. If a man is already proficient he should be given a test and if he passes admitted to membership. To admit a man not qualified would be to doom him to unemployment on a disparate basis with his fellow members who are qualified. Further, he would have no means of support while attending a school or training facility to become qualified. This would not serve the minorities but be a cruel irony. A better system would be to test all who purport to be qualified and have a recruitment and training program established, then run an objective testing system.

As to 15(c), it would be preferable to have one test for all and one objective standard, rather than accept a license whose criteria can vary and issued by a party not before this Court.



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As to 15(c) again, if a candidate has such experience as would warrant membership, then he should have no difficulty passing a skill test. Again, one test for all candidates, under the control of the Court.

(8) As to paragraph 16, this attempts to make retroactive the provisions of paragraph 15 and suffers from the same shortcomings. So much of this paragraph as attempts to punish the Union by a forfeiture of initiation fee is entirely unreasonable. The Union will already be paying the administrator, hearing officers, etc., etc. Further, to assume a bad intention on the part of the Union is not a sound judicial philosophy. Finally, the Union cannot exist for any one minority or otherwise if it is bankrupt.

(9) As to paragraph 17, experience alone in another jurisdiction is at best highly speculative. First, New York is incomparable; the size of the buildings, the size of the equipment, the volume of people in the general area of high-rise construction. Second, the basic requirement is the requisite skill, thus the argument for a universal testing system for all.

(10) As to paragraph 19, the only applications that should be considered by the Administrator are those of rejected minorities as defined in this Order who object to such rejection.

(11) As to paragraph 24, a Union like any other organization in order to function on behalf of its members, minority and otherwise, must have money. It needs money most in times of unemployment. The payment of rightful obligations should not be deferred either because of a member's unwillingness to work or his unwillingness to share the possible dual burdens of unemployment and a need to support the organization. Staged payments are reasonable but should not be tied to employment.

(12) As to 27(b), aside from the problem of bookkeeping and the International Constitution as to obligations to the International Union, we urge the Court to consider that if an applicant wishes to be a conditional member it is his choice and he is represented by the Union for such period. Accordingly, he should be obligated to pay his initiation fee, dues and other

Honorable Charles H. Tenney

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assessments. However, if the Court agrees with the Government on a conditional membership, such member should not be permitted to vote or participate in elections until all such conditions have been satisfied.

(13) As to paragraph 30: One, presently there is one common referral hall; nothing else is common. Local 14 receives requests for the Local 14 jobs and refers Local 14 members. To operate otherwise would be an administrative nightmare and serve no useful purpose. What end is served by having a Local 14 man read a long list of jobs available for Local 15 members and vice versa. Two, under the program suggested by the Government the hall is physically not big enough to hold the numbers of people involved. Local 14 with its one thousand or less members would have five hundred men in the hall. Local 15 with a possible six thousand men could not be physically handled.

Finally, there are serious legal problems as to the propriety and enforceability against an individual of a forfeiture of his right to work. This last sentence should be omitted. This is equally applicable to paragraph 31.

(14) As to paragraph 32(a), subparagraph 7, ME (maintenance engineer) and OE should be omitted since they are not descriptive of a skill to operate a particular piece of equipment. There should be substituted the following:

PS	(power shovel)
D	(drag lines)
BH	(back hoe)
CS	(clam shell)
PD	(pile driver)
C	(cranes)
C-1	(cranes, long boom)
L	(locomotives)

As to subparagraphs (b), (c), (d) and (e), if a question arises as to a man's qualification give him a test. This obviates subjective judgment and the administrative problem of proof of work experience.

(15) As to paragraph 33:

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(1) As previously stated, the hiring hall cannot hold more than a small fraction of the total number of unemployed.

(2) Daily attendance at the hall is a financial burden on the unemployed, yet it is required.

(3) As to Local 14, there is no "suburban" work.

(4) There is no provision for the longest unemployed who is qualified being the first to get a job. If for any reason (i.e., lack of carfare) a man misses a day he is overlooked.

For all these reasons Local 14 in its proposed order has suggested careful study and the submission of a cogent plan within sixty days. This position is again urged.

(16) As to paragraph 34(b), Local 14 has no foremen or deputy foremen. It does have Master Machanics. These persons are assigned by the Union, and as Union representatives should continue to be so designated.

(17) As to the referral system embodied in paragraph 35, it has the problem as stated before:

(a) All unemployed can't fit into the hall.

(b) If a member is absent even if only temporarily, he's omitted.

(c) Jobs are distributed on the basis of the position on the daily list (victory to the swift).

(d) Men who refuse jobs go to the bottom of the list. No excuses are acceptable.

(e) All of the machinery for suburban hiring is surplusage as Local 14 has no extra City jurisdiction.

(f) The mechanics of a crane training list are not operable on a reasonable basis as now constituted.

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Again, the Court is urged to adopt the Local 14 proposal for reasoned study of this provision.

(18) As to paragraph 36, this should be omitted. The practice in the trade as far as Local 14 is concerned is that if a particular piece of equipment is needed on an overtime basis the man operating that machine works the overtime. No evidence was educed on overtime nor was there any finding of fact that there was any discrimination by employers in the issuance of overtime. The present practice should be maintained.

(19) As to paragraph 37, this problem of transfer after a break in continuity is a serious one and is also tied into the hiring hall provision. In this industry there are "vendors", companies that own cranes and other equipment that they rent to "users" on a daily basis. The operator is on the "user's" payroll. However the vendor arranges to provide the operator and wants the same operator for safety and economy reasons (break-in time, etc.) yet there are occasional breaks in rental periods (not continuous). Another problem is that some large general contractors for safety and economy reasons use the same personnel, but cannot afford continuous employment between jobs for the utilization of this personnel. This paragraph should be stricken.

(20) As to paragraph 38, the lay-off usually follows the need for the particular piece of equipment on a given job. Again, in the absence of evidence on lay-off or a finding of fact of discrimination in this area, it is suggested this paragraph be omitted.

(21) As to paragraph 39, there is no basis in the pleadings or in the evidence at trial, or the opinion of this Court for the contents of paragraph 39. Further, there is not now any reason for creating such a job with its concomitant expenses to employers and the Union. This should be omitted.

(22) As to paragraph 41, no basis exists for the appointment of a "monitoring agent" for the hiring hall. There is no showing of any present need or past wrongdoing by Local 14 to be remedied by such a monitor.

(23) As to paragraph 43, the requirement for at least 100 minority operators per year is objectionable because:



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(1) It is a quota.

(2) With approximately 1,000 members it would be 100 per year for Local 14. The same number is suggested for Local 15 with approximately 6,000 members.

(3) This alone would meet the goal in approximately three years without the balance of the order, and

(4) It is an unfair and unrealistic burden in the light of all of the proceedings on this matter.

(24) As to paragraphs 43 through 48, they contravene the intent of paragraph 42 which calls for the prospective submission of proposed training plans (recruitment, training, and qualifying).

(25) The back pay provision should be limited to proven damages after proven liability.

For all of the serious questions raised as to the government's order and the judge's indication that the other proposed orders are incomplete, it is respectfully suggested that the orders be resettled. Further, that the time for resettlement be after the conference with the United States Attorney as requested in the enclosed copy of our letter of even date.

Very truly yours,

  
Richard L. O'Hara

ROH/cds

cc: Robert Brady, Esq.  
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GEORGE E. BOSSO  
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NOT ADMITTED IN  
NEW YORK

July 30, 1976

Honorable Charles H. Tenney  
United States District Judge  
United States Courthouse  
Foley Square  
Room 1904  
New York, New York 10007

Re: E.E.O.C. v. Local 14 International  
Union of Operating Engineers, et al.  
72 Civ. 4278 2498 (C.A.T.)

Dear Judge Tenney:

This letter is submitted pursuant to the suggestion made by you on the occasion of a conference held July 26, 1976 with reference to the above matter. More specifically, your suggestion to which I am referring, is that set forth on the bottom of page 74 of the transcript taken on July 26 and runs through the top of page 75. Said suggestion is that if the Defendants find anything extremely objectionable or unworkable, or the like, in the Government's proposed order, we were to put it in writing and send it to you and that you would give it serious consideration.

Further, this letter is being submitted with the request that it become part of the record in this action.

Set forth below are the comments submitted on behalf of our client, the General Contractors Association of New York, Inc. (GCA). Unless otherwise indicated the numerical references made herein are the provisions of the proposed order of the Government, as such numbers appear in said proposed order.

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Honorable Charles H. Tenney  
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Page 3, Paragraph 4. In this paragraph there is a provision for enjoining the defendant contractors association from engaging in any act or practice which has the purpose or effect of discriminating in recruitment, etc. As was stated at the July 26 conference by the undersigned and is evidenced by the Pre Trial Order (see page 11 therein), in this action, no claim of liability was asserted by the Government against GCA. It must then follow that there has been no contention, by the Government, that the GCA violated the law under which this action was brought. Inasmuch as said law is still in effect the GCA is obligated to comply with it, absent an injunction to that effect. It is GCA's contention therefore, that no necessity exists for a permanent injunction compelling GCA to comply with such law.

In the same Paragraph 4, line 5 from the bottom on page 3 it recites "They shall not fail or refuse to refer for membership . . . on the basis of color or national origin . . .". Such a directive obviously is very general in its content and the language therein does not reasonably apprise the Contractors Associations of what constitutes compliance and/or breach thereof.

Page 5 Item C "THE ADMINISTRATOR" We respectfully submit to this Court, that before the expense of hiring an Administrator, to implement the decision of this Court, that reasonable opportunity be granted to the Defendants to evidence compliance with the decision of this Court without using an Administrator. Further we submit on behalf of our client, that if an Administrator is to be appointed he be appointed from the ranks of civil servants.

On behalf of GCA it is further respectfully submitted that the proposed order which provides for the GCA members to hire only from Hiring Halls is a violation of the contractual rights of such members. As recited above no claim of liability was asserted herein against the GCA. In addition, it is the position of the GCA that even if there had been a contention of liability and a finding of liability against the GCA there can be no deprivation by the Court of the right of GCA members, to negotiate their collective bargaining agreements with the Unions. In the within case, no liability has been asserted against the GCA and it is submitted that lack of authority of the Court to deprive the members of the GCA from performing their own collective bargaining agreement negotiations is compounded. In support of the foregoing, we submit to this Court the case of H. K. Porter Co., Inc., etc., Petitioner against National Labor Relations Board, et al., 397 US 99, L Ed 2d 146, 90 S Ct 821. In that case it was held that it was the job of Congress not the National Labor



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Relations Board or the Courts to decide when and if it was necessary to allow Governmental review of the proposals for collective bargaining agreements.

Whether or not a Hiring Hall is to be used is a subject that is properly treated in Collective Bargaining Agreements. No such agreement exists between the GCA and the Unions herein concerned. For this Court then to impose its will, in mandating that the GCA or its members be bound by the proposed order, and compelled to hire solely from the Hiring Hall, is to deprive the members of the GCA of their contractual right, which they have under the law, in circumstances where the Court lacks the power to make such a deprivation.

With respect to the position of GCA set forth above concerning the Hiring Hall it is respectfully submitted that this Court should not confuse the circumstances herein with those cases wherein employers and/or their contractor associations have, in their collective bargaining agreements consented to the use of Hiring Halls. A vital fact herein which distinguishes it from the cases where Hiring Halls were mandated by Court Order, is that no agreement to use a Hiring Hall exists between the GCA and the Unions herein.

We purposely refrain from setting forth herein all of the paragraphs in the proposed order, which embrace features of the Hiring Hall, but take exception to all reference in the proposed order which pertain to the use of a Hiring Hall being made part of any order binding on the GCA or its members. We strongly urge that it is not the intent of Congress to deprive Contractor employers of rights given to them under the law but rather to enforce rights of individuals which exist under the law. It is the fact that both the rights of the minorities and the Contractor employees members of GCA can be protected in the circumstances existing herein. No evidence has been submitted herein for the Court to make a determination that the contractual rights of the GCA Contractor members must be cut off to assure the rights of the minorities be preserved. The rights of both can exist co-extensively.

It is also submitted to this Court that the use of the Hiring Hall as the sole source of employment deprives an individual of his right to seek employment, directly from an employer.

With reference to OVERTIME, Paragraph 36 on page 22 it is respectfully suggested that in distributing overtime equally to employees on each job location, such distribution should be restricted to employees in the same categories employed on such location and not a blanket order covering all employees.



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TRANSTEPS Paragraph 36A. In this paragraph which deals with workmen being laid off by a union contractor for more than one day being required to thereafter register for referral, at the Union Hiring Hall in order to obtain further employment, GCA, in addition to its general objection to being compelled to use a Hiring Hall objects to such provision as being impracticable. A one day lay off is not a reasonable time for such a provision. It is suggested that that period be made 30 (thirty) work days.

The references herein above, by the undersigned, to the Contractor members of GCA, is not intended to be deemed a course of conduct wherein the contractor members of GCA are participating herein, in any way. This firm does not represent any such contractor members of GCA in this action and does not purport to have any authority to act herein on behalf of such contractor members of GCA.

On the above date, the undersigned received a copy of letter dated July 29, 1976 to you from Robert B. Fiske, Jr., United States Attorney, over the signature of Michael S. Devorkin, Assistant United States Attorney. In said letter Mr. Devorkin submits an argument in support of that part of the Government's proposed order for injunctive relief against the GCA. In answer thereto, Your Honor's attention is directed to the fact, in the cases cited by Mr. Devorkin, that the Complaints in the respective cases, named the employers as defendants for purposes of relief and the Government asked for and "the Court signed orders granting permanent injunctive relief of the kind sought here against the employers."

The GCA is not an employer. No claim of liability is made against it. The positions of the GCA hereinabove set forth, with respect to such permanent injunctive relief, is hereby reiterated, repeated and realleged as if fully set forth hereof. The applicable law is still in existence. It has the same effect as a permanent injunction. Merely because the Court in other actions, which might not have the same surrounding circumstances in existence as herein present, granted the same injunctive relief sought herein against the employers, is not authority for this Court granting the same relief. Again, GCA is not an employer. In the cases cited by Mr. Devorkin, no evidence is supplied that, as herein, the Government made no claim of liability against the employers. Unless the facts are similar, the cases cited by Mr. Devorkin should be given no consideration.

Further, on behalf of GCA, the Court is advised that by the submission of this letter to the Court and its participation at the July 26, 1976 conference for the purpose of reviewing the

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proposed Orders, GCA does not intend to waive, nor shall it be deemed to have waived any rights GCA has had and/or shall have to challenge the propriety of the method of determining the relief to which the Government is entitled in lieu of a hearing for such purpose.

Thanking you for the consideration you give this letter,  
I am,

Respectfully yours,

*James J. A. Gallagher*  
James J. A. Gallagher

JJAG:ceb

cc: Robert B. Fiske, Jr.  
United States Attorney for  
the Southern District of New York  
Attorney for the Plaintiff  
(Michael S. Devorkin)

Richard O'Hara, Esq.

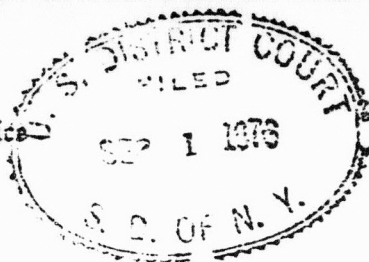
Robert Brady, Esq.

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ADDRESS ONLY TO  
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United States Department of Justice

UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF NEW YORK  
ONE ST. ANDREW'S PLAZA  
NEW YORK, NEW YORK 10007



MD:sr  
72-1343  
n-2432

August 5, 1976

BY HAND

Honorable Charles H. Tenney  
United States District Judge  
Room 1904  
United States Courthouse  
Foley Square  
New York, New York 10007

Re: E.E.O.C. v. Local 14,  
International Union of Operating  
Engineers, 72 Civ. 4278-2498 (C 47)

Dear Judge Tenney:

The following response is submitted in reply to the objections raised by letters from Local 14, Local 15, General Contractors Association (GCA) and the Construction Equipment Rental Association. Our response is itemized to correspond to the paragraphs objected to, but a few preliminary observations are in order.

The Government's proposed order seeks relief in all areas affected by the practices of the defendants: Union membership, job referrals and other employment practices, job training and recruitment, and back pay. It also provides a remedial racial goal, an Administrator to supervise its implementation, and general equitable relief. Non-whites should be admitted to the Unions upon objective, fair criteria, no more difficult than historically imposed on whites and no more necessary than for business necessity. The same is true for job referrals which should be on a first out of work - first referred basis. Affirmative steps must also be taken to recruit and train non-whites to provide heretofore unavailable opportunities for entry and advancement for non-whites. Finally, there



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must be back pay and other benefits to make whole the victims of the unions' illegal practices. While the Government's order will stand on its own merits, we have attempted to look to other orders in similar cases in this district. In that connection, for example, the provisions for general relief and the Administrator closely follow Judge Werker's order in E.E.O.C. v. Local 28, 71 Civ. 2877, and the Hiring Hall procedures closely parallel Judge Frankel's order in United States v. Local 46, 68 Civ. 2116.

PARAGRAPH 3

Local 15 objects to administering a practical test every two months for operators. All this requires, however, is that those persons who want to take a practical test to prove they are operators will have the opportunity to do so on a regular and frequent basis, thereby assuring both the continuing entry of qualified minority operators into the Union and the constant upgrading of skills of minority workmen. The only result will be more minority Union members, and more qualified minority workmen available for referral as operators.

PARAGRAPH 4

GCA and the Construction Equipment Rental Association object to any injunctive relief against employers. However, it is important to insure the effective implementation of any order that the employers and employers associations are bound by the terms of the order and prevented from consciously, or otherwise, assisting the Unions or their members to circumvent this Court's decree. As noted is our letter dated July 29, 1976, other judges in this district have found it necessary and proper to grant such prospective injunctive relief against employers' associations in the construction industry. There as here, the employers' association, not the individual employers, were named solely for purposes of relief, and yet the court granted the type of relief sought here. GCA's characterization of the complaint and injunction as reaching employers is simply incorrect. Finally we call the Court's attention to CX 14, GCA's answers to plaintiff's interrogations, No. 9, wherein GCA deposes that "GCA has the following collective bargaining agreements on behalf of its members with: Locals 14, 15 and 15A... 15-C ... 15-D."



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PARAGRAPH 6(b)

We see no basis for concluding that Local 14 cannot strive to reach a 10% minority goal within one year of the entry of this order and we strongly oppose any delay until 1982. Other cases in this district have imposed similar schedules on construction unions. See, e.g., United States v. Local 638. Since the Court indicated it would change the July 1st date in Paragraphs 5 and 6(a) to August 1 or a date close to the date of signing the order, we see no reason for not using August 1, throughout Paragraphs 6(a) and 6(b), and, of course, Paragraphs 11, 14 and 62.

PARAGRAPH 6(c)

As to pensioners, we rely on the arguments advanced in Court and in our letter dated July 29, 1976, and suggest that we have proposed a fair way to resolve the difference, between the parties on this issue. We note, however, that Local 14 is incorrect in asserting that the statistics used by the Government were based solely on the active labor force. It is true that we asked the Court to compare these Unions' minority statistics to New York City's relevant labor force's statistics. However, the Union statistics used were always based upon the number of minority union members, without differentiation for pension status, and the unions never objected to computing the minority membership statistics in this way.

Finally since the Administrator is bound by paragraph 12, nothing contained in paragraph 6(c) gives him power to independently turn the goals of the order into permanent quotas. Obviously, the Administrator must take action enumerated by the order to achieve these remedial goals, and that is why such decrees have goals.

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PARAGRAPH 7

GCA objects to the costs of an Administrator, but we do not believe they have standing to do so since Paragraph 13 provides the Unions will pay his expenses and costs. We repeat that the conditions and practices in this industry over many years together with the myriad tasks that must be carried out quickly and throughout the period of the affirmative action program demand the use of an Administrator in this case. In numerous cases this Court has recognized the need for an Administrator. United States v. Local 638 and United States v. Local 28, 71 Civ. 2877 (Judges Bonsal and Werker, respectively), and this has been true, even in cases involving settlements. United States v. Local 46, Wood Wire and Metal Lathers Union, 68 Civ. 2116 (Judge Frankel) and E.E.O.C. v. Newspaper and Mail Deliverers Union, 73 Civ. 4278 (Judge Pierce). Finally, the Unions continued insistence, despite the contrary finding by your Honor and the exhaustive trial record in support thereof, that this is a statistical case and very little need change or be done, is ample demonstration that an Administrator is critical to any successful order for relief.

Moreover, aside from the legality of appointing a government civil servant as administrator, we submit that it is far preferable to have an independent person of substantial experience, reputation and prestige, a point Local 14 seems to recognize. We feel that Mr. Owen is such a person. His past public service is certainly a substantial positive, rather than negative factor. It no more disqualifies him from being a fair impartial and effective administrator, that did prior experience in the Department of Justice disqualify many of the judges, including the chief judges, of this district court and this circuit court of appeals from services as fair, impartial and effective judicial officers. Local 14's intimation to that effect is a specious means of attacking a candidate with the highest qualifications.

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PARAGRAPH 8

Local 14's objections are frivolous. This paragraph grants the administrator additional authority which is necessary and proper to the performance of his duties. It is neither too vague or broad and follows closely the approach taken in many other similar orders. Any abuses can be brought to the Court's attention.

(a) Your Honor's modification of "increase" to "alter" meets any conceivable objection.

(b) This merely permits the Administrator to propose additional methods he "deems necessary and proper to implement and insure the performance of the provisions of this order."

(c) Of course, reports, records and investigations may be critical to the Administrator and obviously the preface to paragraph 8 defines their purpose.

(d) This merely gives the Administrator the power to review and approve applications improperly rejected by the Unions and reject those improperly approved. See Paragraph 19. Such power is important to the Administrator's supervision of the Union admission aspects of the Order.

(f) Obviously, the Administrator can consider only matters covered by the Order. However, it is important to give him the flexibility to use hearing officers so that he does not personally have to hold hearings on all factual disputes.

PARAGRAPH 9

Local 14 wishes to tie the hands of the Administrator. The Administrator may through his own investigation, or otherwise, receive information causing him to realize there may be a problem or a violation of the Order and he should certainly have the power and flexibility to act on his own initiative to enforce the Order.



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We believe that the Court and the parties must have confidence in the Administrator's implementation and enforcement of the Order with appropriate recourse to the Court. It is obvious, and past experience compels us to point out, that the great bulk of decisions of the Administrator which make a change or which respond to complaints of discrimination will be to correct some violation of the Order. The minorities and Government have little or no opportunity to changing the status quo. Unless confidence is expressed in the Administrator by leaving in effect his decisions until the Court can review them, the losing side will have a strong incentive to automatically appeal and delay the effect of a decision, and there will be a long delay before such decisions take effect. Generally, this will mean discriminatory conditions will remain in effect. The Government is satisfied with leaving in force these decisions pending appeal even if it loses, and we fail to see any reason why Local 14 should not also be so satisfied. Unless, of course, the Union expects to violate the Order frequently and be on the losing side of such decisions.

PARAGRAPH 11

We do not understand Local 14's complaint that the reports are too frequent or too broad. The Court should be adequately advised of the progress or lack of progress and reasons therefor as well as the necessity for changes. It is better to advise the Court before too much time has passed and the harm is done and more difficult to remedy.

PARAGRAPH 15

Paragraph Fifteen merely follows the system of criteria and opportunities which were historically available to white members of the Union. If an individual works satisfactorily on a job for a Union contractor, then by definition he is qualified to perform the skills required of work within the Unions' trade jurisdiction and therefore is entitled to status as a Union member. The Unions' argument assumes that the employers will use unqualified men, which is ridiculous, and has never occurred to them in the past.



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Local 15 historically did not administer tests for Union membership, but rather relied on the employers' determination that the person was qualified enough to keep on the job. Now, when minorities want to be in the Unions, for the first time the Unions are eager to impose a test on them. Obviously there has never been a test for non-operators. As the Court found, higher admission standards for minorities than previously existed for whites is illegal.

Local 14 men who have to work a crane will still have to pass the city test if they work cranes where a city license is required. However, there is no reason why a man who operates Local 14 machinery for an employer cannot join the Union if he desires.

Local 15's argument about the New York Plan is absurd. The Court heard substantial testimony that such men had performed Local 15 work side by side with Union members. Often the only difference was that the minorities were paid for less. Secondly, the Court also concluded that much of Local 15's work was semi-skilled or unskilled, and did not involve operating equipment. Therefore, the New York Plan workmen are easily qualified for such work and therefore for union status.

Local 14's challenge to paragraph 15(c) is hard to comprehend since they have so adamantly insisted throughout this case that they will admit anyone who has the New York City hoist license A or B. Local 15 does not object to the licensing criterion of "15(c)". The Government has no objection to making clear that only the Hoist License A B or C applies to Local 14.

As to paragraph 15 (d) there is ample evidence in the trial record, and the Court so found, that training and experience offered by, e.g., the Army or the Job Corp were superior to that offered by Local 15, and therefore this should be sufficient for union membership. The same is obviously the case for those with many years experience in other countries.

Finally, we note that Local 15 has permitted members of other local unions to transfer to Local 15 and has permitted transfers from one of its branches to another, without ever requiring one of these men, even operators, to take any kind of test. This shows that those, including operators, with appropriate job experience, should be eligible for admission to the unions.

PARAGRAPH 16

Only Local 14 seems to object to those minorities who have already met the conditions of ¶15(a) or (b) getting into the union. Obviously, if these men are already qualified they should not be required to meet any additional requirements. The Court has already indicated it will alter the provision for waiver of the fee.

PARAGRAPH 17

See the response to paragraph 15. In addition we note again that Local 15 has always accepted experience in other jurisdictions for whites as long as they belong to a sister union. We see no reason to have one standard for white union members and one for minorities. Furthermore, where a license to operate a particular machine is required by the city, the workmen will have to comply, and the employer will still be free to discharge for cause. See paragraph 38.

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PARAGRAPH 19

See response to paragraph 8(d). Unless he receives such applications he has no way of knowing whether the union is improperly admitting applicants or admitting whites on less difficult terms than non-whites in violation of paragraph 1.

PARAGRAPHS 23, 24, 26 and 27

These provisions simply assure that a non-white applicant who previously was denied union membership because of the Unions' discriminatory policies will pay an initiation fee no greater than the white members who got in to the unions at the time the non-whites did not. Therefore, the non-whites will not be harmed by the unions' discriminatory admissions policies. Moreover, given the past practices and reputation of these unions; we submit it is necessary and proper to allow gradual payment of initiation fees for non-whites in order to encourage them to stay in the industry and not impose a sudden financial strain on them. Paragraph 27(a) applies only to those applicants for reduced or gradual fees which the unions have rejected and is a reasonable protection of their interests while they await a final determination on their application by the Administrator. Finally, provisions similar or identical to these were recently approved by Judge Werker in the Local 28 case.

PARAGRAPH 30

Locals 14 and 15 claim one Master Eligibility List and one Hiring Hall list would create confusion and inefficiency but fail to explain why. In fact, quite the opposite is true. As the Court found, there is some overlap in types of equipment operated by Local 14 and 15 men. Sometimes they work the same equipment and sometimes different versions thereof. The objective of any affirmative action program should be to maximize the work opportunities in a fair way and eliminate arbitrary barriers to such opportunities. This will also serve to encourage more minority workers and enhance improvement of skills. Not only is there no legitimate reason that a qualified worker cannot do both Local 14 and Local 15 work, but there has been nothing close to a showing of irresistible demand justifying such an arbitrary demarcation line.

Moreover, it is physically impossible for a person to be in the Hiring Hall and try to respond to jobs being offered at two places in the Hall from two different lists. Therefore, one list will be more efficient and more simple. The business agents will continue to receive requests from their respective employers for their respective jobs but will merely record them chronologically and make them available through the single Hiring Hall List.

Finally, we have included strong disincentives in the order which should discourage employees and business agents from circumventing these lists and defecting the whole concept of giving out work on a first on the list-first out to work basis.

PARAGRAPH 31

The two contractors associations, but apparently not the unions, take exception to requiring union members to seek work only through the union hiring hall. We submit that this is a necessary temporary provision for the time it will take to reach the remedial goal.

In the first place, the Court did find that "both unions effectively control the work opportunities within their jurisdiction." (Finding No. 14). For all practical purposes, men use the unions for job referrals, and the unions express their displeasure to employers if they hire someone directly themselves. Moreover, the employers, subject to their right to discharge for cause, are required by contract to, and generally do, recognize the unions as a source of qualified employees. (Finding No. 14). It seems



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clear then that requiring union members to use the regulated and fair referral rules instituted by the Government's proposed order will not make any material change in the current situation or have any demonstrable adverse impact on the employers.

Without attributing any bad intent to the employers or without assuming they will be at fault, it seems clear that if union members are free to seek work on their own and foreman on job sites are free to hire workmen independently of the hiring hall, then the very system of preferential treatment for relatives and friends which favored whites and was at the heart of the problem in this trade, will be able to flourish unaffected by this Court's order. The subjective, unfair practices of the unions' old referral systems will be transferred to the job sites. The result will be the same: unequal job opportunities for non-whites. Moreover, once the new objective, non-preferential system is established at the Hiring Hall, whites will no longer have priority status and will be strongly encouraged to forsake the Hiring Hall and find work from friends and relatives or by other methods which have a discriminatory impact on non-whites. Therefore, if the Court's order is to have any effect and if there is not to be a giant loophole through which white workmen are invited to walk, union members must be required to use the new and fair system which the Government proposes.

The Associations' legal argument is equally without merit. Certainly the Court has power to require the unions and their members not to employ practices which have the effect of discriminating against non-whites. Similarly, the Court can prevent the unions from being parties to contracts which have a discriminatory effect. The fact that the Associations are parties to contracts which will have such an effect does not give them power to enforce it, no more than they could enforce a contract requiring the unions to refer only white workers. Aside from the fact that the employees' expectations for direct benefits from employers are based upon benefits gained from a previous referral system which distributed jobs in a discriminatory way, United States v. Bethlehem Steel Corp., 446 F.2d 652 (2d Cir. 1971), collective bargaining agreement rights, even of innocent parties, can be modified in order to rectify the effects of past discrimination. Patterson v. Newspaper and Mail Deliverers Union, 514 F.2d 767, 775 (2d Cir. 1975), cert. denied, 44 U.S.L.W. 3756

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(U.S. June 20, 1976). See Frank v. Bowman Transportation Co., 44 U.S.L.W. 4356 (U.S. March 24, 1976).

#### PARAGRAPH 32

Local 14 proposes to list specific machinery, however we suggest that paragraph 32(c) deals with this problem by giving the Administrator authority to determine exactly which machinery should be listed.

As to the remainder of paragraph 32, it simply provides a mechanism for signing the List and checking qualifications. Of course, the Administrator may use a test where appropriate to determine qualifications. (see paragraph 46) or may rely on proof of a job with an employer. This follows the approach of paragraph 15. Without such discretion, there may be a practice whereby non-whites will automatically be referred for tests, but not whites. Finally, we note that the unions have historically accepted a worker's assertion of his qualifications without requiring him to take a test before referring him for a job. See paragraph IV(3) of Local 15's proposed order.

#### PARAGRAPHS 33, 34 and 35

The purposes of these provisions is to establish a real first out of work-first referred to work system which employs objective criteria and minimizes the opportunities for personal subjective discretion by business agents and various informal behind-the-scenes means of circumventing this principle.

The best way of establishing such a system to install one referral list used by all men out of work. As a man becomes unemployed he reports to the hall and signs the bottom of this list, and as work becomes available it is assigned in the order the jobs requests are received to the men in the order they have signed the list. Of course, initially the

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first list will not directly correspond to the length of time a man has been out of work. But under the present system that is exactly the problem with the haphazard and loosely run current system which depends upon the men stating their time out of work and a random process of signing the out of work list. Under the new system, once the list is first established it will quickly accurately reflect the order in which men have been out of work, since the men will stay on the list in the order they have been out of work until they are referred for a job.

While daily attendance may cause some inconvenience, it is critical to the successful operator of the hiring hall. If men are permitted to either sign the list by telephone or to confirm their out of work status by telephone, they will be able to work without the business agent knowing it and still maintain their priority on the list. Moreover, the use of telephone requests and job assignments has been one of the practices which have provided business agents with unfettered discretion and which has operated to deny non-whites equal referral opportunities. This approach is identical to that adopted by Judge Frankel in United States v. Local 46. As to the physical capabilities of the Hall we do not know there will be any problems. Surely the Unions, with the help of the Administrator, can determine what, if any, problems exist and develop some imaginative solution therefor.

#### SUBURBAN WORK

Locals 14 and 15 object to different treatment for suburban work. These provisions were inserted solely to accomodate persons interested mostly in such work, and therefore, the Government does not object to the appropriate deletions. Accordingly we suggest the following changes:

✓ 130: change "joint Hiring Hall sheets"  
to "a joint Hiring Hall sheet."

133: Delete "all workmen seeking referral to employment in suburban counties may register by appearing at the Union Hall and by noting on the register their specific availability for suburban referral, or by telephoning the business agent and requesting to be registered on a separate Hiring Hall sheet designated the



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Hiring Hall Call-in sheet. An individual who telephones for registration shall be eligible only for suburban jobs."

¶35(a)(3): Change "subparagraph (5) for jobs in New York City" to "subparagraph (4)"

¶35(a)(4): Delete entire subparagraph, including (i), (ii) and (iii).

¶35(a)(5): Change to ¶35(a)(4).

¶35(a)(5)(ii): Delete "or Call-in sheet, where, applicable".

¶35(a)(6): Change to ¶35(a)(5).

¶35(a)(7): Change to ¶35(a)(6).

As to Local 14's objection to paragraph 34(b), the Government has no objection to requiring that Master Mechanics be union members, but there is no reason why this highly sought after job classification should not be made available to qualified non-whites on a first in-first out basis as with all other jobs.

The remaining objections to paragraph 35 are without merit. Jobs are not distributed on the position of a daily list, but rather of a permanent list to which additions and subtractions are made on a chronological basis as new men report for referral and others receive job referrals. The unions fail to remember that historically business agents relied exclusively on the workers' assertions about how long they were out of work, and started the list over each week, thereby assuring it had no correlation to length of time out of work.

Men who want to refuse a job referral are given one chance to do so without penalty. Only on the second refusal do they lost their priority on the Hiring Hall sheet. This provides flexibility but makes it harder to give preferential treatment in violation of the Order. A similar provision was adopted by Judge Frankel in United States v. Local 46..



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Locals 14 and 15 completely distort the purpose, operation and effect of the "Crane Training" list provided by paragraph 35(a)(5). It is absolutely clear in this record that the Local 15 oilers job is critical for a person seeking training as a Local 14 crane operator. The city requires such experience as a prerequisite to its hoist machinery licensing test. Moreover, as the Court found, on the job training is often better than that heretofore offered by the unions in school.

If the order is to be successful in training non-white crane operators, it must contain a modest provision for some guarantee of referrals as oilers for non-whites. This is all that §35(a)(5) does. In the context of current contracts and the single referral list established by the proposed order, it does not interfere with union jurisdiction and has not been shown to be unworkable. Furthermore, the objections raised do not even remotely amount to the "irresistible demand" necessary to sustain a continued impediment to such on the job training of non-whites. If this is the unions' response to such a modest proposal for on the job training, it raises serious questions as to the sincerity of their own limited and vague training proposals.

Finally, this is not a form of forbidden reverse discrimination. Given the practices in this industry, it is quite clear that white workers will have enormous opportunities for on the job training from white friends and relatives, irrespective of whether they are working as oilers. Moreover, all other job referrals are unaffected by this provisions. Paragraph 35(a)(5) simply provides the non-whites with some minimum amount of opportunities. In the context of the more substantial opportunities still available to all whites and the amorphous nature of the group affected, there is no exclusion or limitation placed upon a small easily identifiable group with fixed expectations. Such a provision therefore violates none of the proscriptions of E.E.O.C. V. Local 28, 532 F.2d 821 (2d Cir. 1976) or Chance v. Board of Education, \_\_\_ F.2d \_\_\_ (2d Cir. 1976). In Chance the Court of Appeals reversed because the restrictions imposed by the District Court were not based upon any finding of discrimination by the defendants, a situation far different than this one. In Local 638, a small group of whites was excluded from all training opportunities. This limited proposal is consistent with the approach approved in United States v. Wood, Wire & Metal Lathers Union, Local 46, 471 F.2d 408 (2d Cir. 1973).

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PARAGRAPH 36

Local 14 objects completely and the GCA wants the equal distribution of overtime to apply to employees by similar job category. Since this provision is meant to eliminate the practice of giving preference to whites over non-whites in the assignment of overtime for men doing the same work, the Government has no objection to GCA's suggestion. We suggest that the following be added to the end of the first sentence of paragraph 36: "in the same job category."

PARAGRAPH 37

Unless the first out of work-first gets a job system is to be completely gutted, the Court must limit to a short time, the breaks in continuous employment which necessitate using the referral system. Otherwise, white employees will constantly claim they are on a break with an employer and therefore eliminate non-whites from a fair chance at these jobs and reduce non-white work opportunities. Whites will be able to seek referrals for jobs and at the same time wait for a former employer to also give them work. This same limitation was adopted by the Judge Frankel in United States v. Local 46.

PARAGRAPH 38

Local 14 alone seems to specifically object to an effort to have a fair lay-off policy. The Court heard substantial evidence that at times non-whites were laid off before whites working the same equipment who started working after the non-whites. This was also true of unskilled work. Paragraph 38 simply provides a fair system whereby two men doing the same work will be laid off on a last hired-first fired basis.

PARAGRAPH 41

Only Local 14 specifically objects. We submit this is an appropriate step to guarantee enforcement of the Hiring Hall procedures, which will eliminate many time consuming and costly complaints to the Administrator. The Administrator may select one of the non-white union members for this job. The Unions can always move the Court later to modify this provision because it is no longer necessary.

Honorable Charles H. Tenney

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If the Court is inclined to modify this paragraph, we suggest an interim period of one year, with the Administrator or parties having the right to apply to the Court for its continuance.

PARAGRAPH 43

Requiring each Union to train 100 operators per year is reasonable. Since Local 14 has about 1550 members (Finding No. 19) and Branches 15-15A have about 3100 members (Finding No. 18), only a portion of whom are operators, this is a reasonably equivalent request for both unions. It is particularly reasonable in light of the fact that Local 15's membership increased by about 700 from January 1, 1972 to November 1, 1974 (Finding No. 18). Moreover, it helps assure that minorities will constantly have the opportunity to enhance their skills and not be relegated to the lower paying, sometimes less prestigious, unskilled work. Since up to one-third of the trainees may be Union members upgrading their skills, it is inaccurate to assert that this will mean the goals will be met too fast. Moreover, since (1) this is not permanent; (2) there is no restriction on the whites trained; and (3) whites also will have opportunities for traditional training from friends and relatives, this is hardly a forbidden quota.

PARAGRAPHS 44-48

These paragraphs provide some minimum guidelines for the submission of plans under paragraph 42. They also assure that additional steps will be taken by the Administrator to provide more training opportunities. It should be clear, that under the pretext of affirmative action, Local 15 is trying to impose a rigid and lengthy training and apprenticeship program on non-whites which never existed for whites and which will substantially increase the difficulty of entrance into this industry, and which is unnecessary. As a vehicle for equal opportunity and affirmative remedial help for non-whites, it is as much a fraud as Local 15's efforts in the New York plan.



Honorable Charles L. Tenney

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PARAGRAPHS 46-55

These closely follow Judge Frankel's order in Local 46 and Judge Werker's order in Local 28, modified by the Second Circuit. 532 F.2d at 832.

PARAGRAPHS 56-59

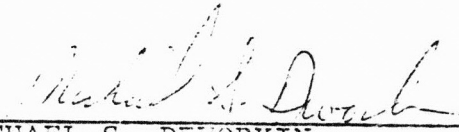
Only the Construction Equipment Rental Association takes exception. These are minimal requirements routinely imposed in such cases and necessary to assure the success of the Court's order.

In conclusion we believe that the Government's proposed order, with the changes we have noted above, is a reasonable approach for providing relief in this case. The practices of these unions have been long lasting, far reaching and pervasive and it will require an exhaustive, comprehensive decree and a determined but fair Administrator to eliminate the effects of such practices and protect the non-white employees.

Respectfully yours,

ROBERT B. FISKE, JR.  
United States Attorney

By:

  
MICHAEL S. DEVORKIN  
Assistant United States Attorney  
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cc; Robert A. Kennedy, Esq.  
1461 Franklin Avenue  
Garden City, New York 11530

Robert Brady, Esq.  
11 Park Place  
New York, New York 10007



MD:ds  
R-2047

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

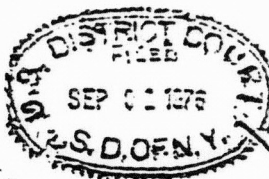
Plaintiff,

-v-

LOCAL 14, INTERNATIONAL UNION  
OF OPERATING ENGINEERS, LOCAL 15,  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, THE IRON LEAGUE OF NEW YORK  
CITY, INC., THE CONSTRUCTION EQUIPMENT  
RENTAL ASSOCIATION, GENERAL CONTRACTORS  
ASSOCIATION OF NEW YORK CITY,  
BUILDING CONTRACTORS' AND MASON BUILDERS  
ASSOCIATION, THE CEMENT LEAGUE,  
STONE SETTING CONTRACTORS' ASSOCIATION,  
ALLIED BUILDING METAL INDUSTRIES,  
RIGGING CONTRACTORS ASSOCIATION,  
CONTRACTING PLASTERERS ASSOCIATION, and  
EQUIPMENT SHOP EMPLOYERS,

Defendants.

: ORDER AND  
: JUDGMENT  
: 72 Civ. 2498 (CHT)



IT IS HEREBY ORDERED, ADJUDGED AND DECREED that  
plaintiff shall have judgment against defendants as follows:

A. GENERAL EQUITABLE RELIEF

1. Defendant Locals 14, 14B, and 15, of the  
International Union of Operating Engineers (the "Unions"  
or the "Union;" unless hereinafter specified, the terms  
"Local 15" or "Union" as applicable to Local 15, shall  
include all branches of Local 15) their officers, agents,  
employees and successors and all persons in active concert  
or participation with them in the administration of the  
affairs of Locals 14, 14B, and 15 are permanently enjoined  
from engaging in any act or practice which has the purpose  
or the effect of discriminating in recruitment, selection,  
training, admission to membership in the Unions, admission  
to membership in the Unions' programs, or Union facilities,  
referral, advancement, compensation, terms, conditions, or

privileges of employment against any individual or class of individuals on the basis of race, color or national origin. The Unions shall not exclude or expel any individual from membership in the Unions, or their programs and facilities, or limit, segregate or classify membership in the Unions, their programs and facilities or fail or refuse to refer any individual for employment with any contractors, their agents, subsidiaries or successors with whom the Unions presently have, or shall have in the future, a collective bargaining agreement (hereinafter "Union contractors") on the basis of race, color or national origin, nor shall they take any other action which would deprive or tend to deprive any individual of employment opportunities with Union contractors or membership in the Unions or their programs and facilities, or otherwise adversely affect his or her status as an employee of Union contractors or member of the Unions or their programs or as an applicant for employment with Union contractors because of such individual's race, color or national origin. The Unions shall receive and process applications for membership in the Unions and their programs, admit members to the Unions and their programs, train, test, refer for employment, handle grievances, and otherwise administer all of the affairs of the Unions and their programs so as to ensure that no individual is excluded from equal work opportunities, including but not limited to overtime and advancement, on the basis of race, color or national origin.

2. The defendant Unions are permanently enjoined from preventing, impairing, obstructing, delaying or otherwise interfering with the Iron League of New York City, Inc., The Construction Equipment Rental Association, General

Contractors Association of New York City, Building Contractors' and Mason Builders' Association, the Cement League, Stone Setting Contractors' Association, Allied Building Metal Industries, Rigging Contractors Association, Contracting Plasterers Association, or Equipment Shop Employers, (hereinafter "the contractors associations"), and/or all Union contractors from fulfilling the affirmative action obligations imposed on them or any of them by Presidential Executive Order 11246, 3 C.F.R. Chapter IV §202, or any order of any official of the State or City of New York.

3. The defendant Unions are permanently enjoined from denying, withholding, discouraging, obstructing or otherwise interfering with direct access by non-whites\* to membership in the Unions by failing to administer at least once every two months or at such greater period as may be determined by the Administrator, a practical test as provided for in Paragraph 46 of this Order and Judgment (hereinafter "Order"), for all applicants to take such a test and are permanently enjoined from administering or requiring any test for admission to the Unions or their programs, or for job referrals, except as provided in Paragraph 46 of this Order.

4. The defendant contractors associations, their officers, agents, employees, members and successors, and all persons in active concert or participation with them, are permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating in recruitment, selection, training, admission to membership in

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\* Hereinafter, the term "non-white" shall mean Black not of Hispanic origin, and Hispanic individuals, and the term "white" shall mean White not of Hispanic origin, as defined in 41 Fed. Reg. 17601 (April 27, 1976).

the Unions' programs and facilities, referral, advancement, compensation, terms, conditions or privileges of employment against any individual or class of individuals on the basis of race, color or national origin. They shall not fail or refuse to hire for employment, nor shall they fail or refuse to refer for membership or advise of membership opportunities in the Unions or their programs, any individual on the basis of race, color or national origin, nor shall they take any other action which would deprive or tend to deprive any individual of equal employment opportunities with a Union contractor or otherwise adversely affect such individual's status as an employee of a Union contractor or as a member of the Unions or their programs because of such individual's race, color or national origin. The provisions of this Paragraph 4 are designed to insure the effective implementation of this Order and do not constitute a finding that the defendant contractors associations and those others described herein have, in the past, engaged in the prohibited discriminatory acts or practices described herein.

AFFIRMATIVE ACTION PROGRAM

B. REMEDIAL RACIAL GOAL

5. By September 1, 1981, Locals 14, 14B and 15 are hereby directed and ordered to achieve a non-white percentage of 36% in their respective memberships and any of their training programs. This remedial goal shall also apply separately to each of Local 15's branches, Nos. 15, 15A, 15B, 15C and 15D, and to any branch hereinafter established by the Unions. Non-whites shall be admitted to the Unions and any Apprentice Programs according to the terms of this Order in such a manner as to insure that there is regular and substantial progress made every year in achieving this goal.



6(a) For the purpose of reaching the above goal of 36% by September 1, 1981, there shall be the following minimum interim goals for non-white membership in Local 15, and each of its branches:

September 1, 1977	14%
September 1, 1978	21%
September 1, 1979	27%
September 1, 1980	32%

(b) The following interim goals shall apply for non-white membership in Local 14 and Local 14B:

September 1, 1977	10%
September 1, 1978	18%
September 1, 1979	25%
September 1, 1980	32%

(c) Each of the above percentages shall be measured against the total membership of the respective unions and branches, including pensioners who have worked as operating engineers whether before or after retirement within the last three years, as of each interim goal date respectively and the final goal date. The parties to this action and the Administrator are to take the necessary measures to attain these goals. The Administrator shall periodically review the progress toward the attainment of these goals and take such action as he is empowered to take under this Order to assure their achievement, and he shall make recommendations to the Court, if necessary, for any further relief that is required to meet these goals.

C. THE ADMINISTRATOR

7. D. Robert Owen, Esq., 30 Rockefeller Plaza, New York, New York, is hereby appointed Administrator to implement the provisions of this Order and to supervise the performance and implementation thereof. He

shall commence his duties upon entry of this Order. If the position of Administrator becomes vacant by virtue of the death or incapacity of the individual hereby appointed or any other reason, the Court shall appoint a successor.

8. In addition to the other powers and duties specified in this Order, the Administrator shall be empowered to take all actions, including but not limited to the following, as he deems necessary and proper to implement and insure the performance of the provisions of this Order:

(a) alter the frequency with which any tests described more fully infra are administered;

(b) devise and recommend additional methods and procedures for entry by non-whites into the Unions and their programs;

(c) conduct an investigation into, and/or require the Unions, and any member of the defendant contractor associations, or the contractors associations to submit reports, or keep records concerning any aspect of this Order, the operation of the Unions, their programs, or employment in the industry;

(d) review and approve or reject the disposition of all applications for entry into the Unions or their programs;

(e) make recommendations at any time to the Court for further relief which he concludes is necessary to assure attainment of the interim and final racial goals and any of the provisions of this Order;

(f) appoint hearing officers to conduct any hearings which in his discretion he deems necessary to hold, and make findings and report to him concerning any issue or provision of this Order.

9 (a) The Administrator shall hear and determine all complaints concerning the operation of this Order and shall decide any questions of interpretation and claims of violations of this Order, acting either on his own initiative or at the request of any party herein or any interested person. The Administrator shall attempt to resolve and decide all disputes expeditiously. All decisions of the Administrator shall be in writing and shall be appealable to the Court if such an appeal is filed within ten days of said decisions. Pending decision by the Court, the decision of the Administrator will remain in effect.

(b) Any party or individual affected by this Order may make a complaint to the Administrator. The Administrator shall give the parties notice of such a complaint within five days, and where a hearing is in his discretion warranted, schedule such hearing within thirty days of receiving the complaint. The Administrator shall expeditiously decide all matters referred to him.

10. Following the criteria set forth in Paragraphs 49 through 54 of this Order, the Administrator shall award back pay to non-whites who file a written claim with him within three months of the date of the entry of this Order. The Administrator is empowered to hold hearings and make such factual determinations as he deems appropriate on all such claims for back pay. The Administrator shall begin to process all such claims upon receipt thereof, and the Unions against which such claims are assessed shall pay the claimant within thirty days of the Administrator's decision.

11. At the end of three months from the date of entry of this Order, and at three month intervals thereafter up to the first anniversary of said date, the Administrator

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shall submit a detailed report to the Court and the parties describing the work he has performed and the progress that has been made in working toward the percentage goal of 36% non-white membership in the Unions by September 1, 1981, and all interim goals and the implementation of this Order. In this report, the Administrator shall recommend such modifications, amendments or changes to this Order that he deems necessary and proper in order to meet the aforesaid percentage goals and any of the provisions or objectives of this Order. From the first anniversary of the date of entry of this Order and thereafter until September 1, 1981, the Administrator shall submit the above-described report every six months.

12. Nothing contained herein shall give the Administrator the right to amend, modify or change the substantive terms of this Order without prior approval of the Court, nor shall he have any power or authority other than that granted to him in this Order.

13. The compensation for the Administrator shall be at a rate of \$70 per hour and such out-of-pocket expenses as approved by the Court, and shall be charged upon and apportioned among the Union defendants as the Court may direct. The Administrator shall submit at the beginning of every calendar quarter to the Unions with a copy to the Court and counsel for the Equal Employment Opportunity Commission (hereinafter "E.E.O.C."), a bill itemizing his compensation and the expenses that he incurred during the immediately preceding quarter. The Unions shall make full payment on this bill to the Administrator, no later than two weeks after the date thereof.

14. The Administrator shall remain in office



through September 1, 1981, or until the percentage goals of Paragraph Five have been met, whichever is later.

D. UNION MEMBERSHIP

15. The Unions shall admit non-whites to membership in the Unions, or branches thereof, if the non-white applicant meets any of the following conditions:

(a) Work on a job within any Union's trade and geographic jurisdiction with a Union contractor or contractors for any combination of fifteen days, except that for Branch 15C, this shall be any thirty (30) days; or

(b) Successful completion of a practical test on one piece of equipment within the Union's trade jurisdiction, as administered pursuant to Paragraph 46; or

(c) Possession of a New York City Hoist Operator's license A, B (with respect to Local 14) or C (with respect to either Local 14 or 15); Welder's license A or B; New York State Welder's license; or Con Edison Welder's certification; or

(d) Establishment of proof of the required experience in the trade jurisdiction of the Unions pursuant to Paragraph 17; or

(e) Successful completion of any Union Apprentice Program hereafter approved by the Administrator pursuant to Paragraph 46; or

(f) Transfer from another Operating Engineers' local in accordance with the constitution of the International Union of Operating Engineers; or

(g) Employment in a non-union shop thereafter organized by the Unions.

16. The Unions shall also admit into their respective memberships within thirty days of any application therefore, any non-white, including any past or present New York

Plan trainees, who, as of the date of this Order, has ever worked on a job within the Union's trade and geographic jurisdiction with any Union contractor or contractors for any combination of fifteen (15) days, except that for Branch 150, this shall be any thirty (30) days, and any non-white who as of the date of this Order has passed a test on one piece of machinery at a training school operated by any Union. The Unions shall provide copies of all applications under this provision to the Administrator and shall act thereon by the thirtieth day after the application and notify the Administrator of any decision and the reasons for any rejections. Rejected applicants shall also be notified that they may appeal to the Administrator, who shall order qualified applicants admitted. Documentary proof of the days worked shall not be required and any disputes will be resolved by the Administrator. However, the improper denial of membership to such applicants may, in the discretion of the Administrator, result in all initial membership fees being waived in whole or in part for said applicant. The Unions shall post a notice to this effect in a form approved by the Administrator in their Hiring Hall and offices and shall send notices of this paragraph to all non-union minorities known to the Unions to have worked within the Unions' jurisdiction, and others as directed to do so by the Administrator.

17. Commencing two months after the date of this Order the Unions shall establish a program for admission to the Unions for non-whites who have had one year's experience obtained in the United States or elsewhere in operating engineer's work or employment reasonably related or similar

thereto, including experience in the Armed Forces or Government training programs. Persons eligible for admission under this program must

- (a) be age 18 or over; and
- (b) be physically fit to perform the work; and
- (c) establish to the satisfaction of a majority of a board of three members knowledgeable in the work of the Unions, comprised of a representative chosen by the Unions, a representative chosen by the Administrator, and a representative chosen by the Equal Employment Opportunity Commission, that the applicant has the requisite experience; and
- (d) be a citizen or lawful permanent resident alien legally entitled to work in the United States.

The Administrator, after due consultation with all the parties, shall establish procedures for application to this program, for investigation and verification of the criteria set forth in subparagraphs (a) through (d), and for the timing and conditions of admission. Appropriate publicity for the program shall be undertaken at the direction and with the approval of the Administrator.

16. The Union shall post a notice in their Hiring Hall and offices in a form approved by the Administrator setting forth the provisions of Paragraph 15 and 17, and shall inform any person requesting information about Union admission about these provisions. The Unions shall make available to all persons in their Hiring Hall and offices during normal business hours and through the mail if requested, applications for membership. The application forms shall be approved by the Administrator to be consistent with the provisions of this Order. All applications for membership shall designate whether the applicant is white or non-white as hereinbefore defined.

19. The Administrator shall receive copies from the Unions of all applications for Union membership and the Union's decision thereon. The Union's decision on each application shall be made within thirty (30) days of the receipt of the application and shall contain reasons for any rejection thereof. Rejected applicants shall be notified by the Unions that they may appeal to the Administrator. The Administrator may initiate whatever action he deems appropriate with respect to Union decisions on any application in order to effectuate the purposes and provisions of this order and shall order the Unions to admit qualified applicants.

20. The Union contractors, using forms approved by the Administrator, shall provide to any requesting employee a certification of the number of days and type of work performed by that individual.

21. There shall be no limitations on the number of times an applicant applies for Union membership, except that not more than one (1) application may be filed by any applicant within any three (3) month period.

22. There shall be no other criteria for Union membership, except upon notice to the Administrator and the parties and upon approval by the Court.

23. Any non-whites admitted to membership in the Unions after the date of this Order pursuant to Paragraph 16 or who previously applied for Union membership or job referral and met any of the criteria of Paragraphs 15 and 17 at the time of the application, shall pay an initiation fee in an amount not to exceed the amount of the lowest initiation fee charged to any white individual who was admitted to membership at the time the non-white would have been



eligible for membership in the Unions by the terms of Paragraphs 15-17.

24. Payment by non-whites of any initiation fees may commence with their employment with a contracting employer, and may be paid on a prorated basis, each payment not exceeding 10% of the net of each employment check, and payable only during periods of employment until the fee is paid.

25. Upon notifying the non-white applicant for membership of his acceptance in the Union, the Union shall also notify him in writing of the provisions of paragraphs 23 and 24.

26. Upon proper application, a non-white eligible for admission to membership in one of the Unions may request the respective Union's Executive Board to reduce his initiation fee to conform to the provisions of Paragraph 23 of this Order and to schedule payments according to the provisions of Paragraph 24 of this Order. Within five (5) days of the receipt of such request, the Union Executive Board shall render a decision on the request in writing and notify the requesting individual and the Administrator of the disposition of the request and the amount of initiation fee (the notification to the Administrator shall also include the requesting individual's name and address). If such request is denied in whole or in part or not acted upon within five (5) days of its receipt by the Executive Board of the Union, a request may be made to the Administrator who shall either grant or deny the request in writing and shall assure that the initiation fee is correctly stated. The decisions of the Executive Board of the Union and the Administrator with respect to Paragraph 24 of this Order

shall be made after having duly considered the financial circumstances of the requesting individual.

27(a) At any time after an application pursuant to Paragraph 26 has been pending with the Administrator for more than five (5) days, a non-white eligible for admission to membership in the Unions shall be admitted conditionally to membership upon payment of \$80 and one month's dues pending the determination of the Administrator, which shall be made within thirty (30) days of the date of the application to the Administrator. During such conditional membership an applicant will be entitled to all the rights and privileges of regular journeyman membership, except that such conditional member shall not be permitted to vote or participate in Union elections.

(b) If a conditional member is terminated without becoming a regular member of the Unions he shall be entitled to a return of any dues paid in advance for any month in which he was not employed, and, if he was not employed during his conditional membership, he shall also be entitled to a return of any payment made toward the initiation fee.

28. The granting of any application pursuant to Paragraph 26 shall not diminish any rights or privileges accruing to membership in the Unions.

29. A non-white person eligible for admission shall be permitted to defer such admission for up to six months from the time he is first entitled to be admitted. If an applicant invokes his right of deferral he shall be admitted, on the same terms and conditions to which he was previously entitled, within thirty (30) days of written notice to the particular Union to which he seeks to be admitted. Non-

n-2247 white members of Local 15 who wish to join Local 14 or 14B, or vice versa, may remain members of their own Local while they apply for, and until they are admitted to, membership in the new Local, and this shall include any period during which they choose to defer admission.

E. RULES AND PROCEDURES FOR  
OPERATION OF HIRING HALL  
AND EMPLOYMENT PRACTICES

30. The Unions shall jointly operate a single Hiring Hall, and one Master Eligibility List and a joint Hiring Hall Sheet, as hereinafter defined, and all members of any Union shall receive job referrals from the Unions only from these lists. Any Union member otherwise obtaining work shall forfeit his right to work within the Unions' jurisdiction for three months.

31. No member of any Union shall seek or receive work directly from any contracting employer.

ESTABLISHMENT OF ELIGIBILITY STATUS

32(a) The eligibility of all individuals seeking employment under the jurisdiction of the Unions shall be established as hereinafter provided and recorded on the Master Eligibility List maintained by the Unions at the direction of the Administrator. The Master Eligibility List shall be kept in a public place at the Hiring Hall and shall be open to inspection on working days, between 7:00 A.M. and 4:00 P.M.

The Master Eligibility List shall contain the following information:

1. Name of the individual
2. Social Security Number
3. International Union Number  
(Union Members only)

4. Local Union Card Number  
(Union Members only)
5. Status:
  - a) Union Member coded by "J" and  
their Union number and branch  
(Member of the Unions or other  
Local)
  - b) Non-Union members coded by "P"
6. Minority Status:
  - a) White coded by "W"
  - b) Non-white coded by "M"
7. Qualifications - coded as follows:  
HA (Hoist operator - A license)  
HB (Hoist operator - B license)  
HC (Hoist operator - C license)  
ME (Maintenance Engineer)  
O (Oiler)  
OE (Operating Engineer)  
BH (Backhoe)  
C (Cranes)  
C-3 (Cranes, Long Boom)  
CS (Clam Shells)  
D (Drag Lines)  
L (Locomotives)  
PD (Pile Driver)  
PS (Power Shovel)  
WA (Welder - A license)  
WB (Welder - B license)  
WN (Welder - N.Y. State license)  
WC (Welder - Con. Ed. test)  
M (Outside Mechanic)  
MA (Mechanic - Class A)



1B (Mechanic - Class B)  
S (Surveyor Unskilled)  
S1 (Surveyor transit man)  
S2 (Surveyor party boss).

(b) The foregoing qualifications may be expanded by the Administrator upon application of the Unions or any employee. Qualifications shall be based upon (1) experience within the trade and geographic jurisdiction of the Unions, (2) similar work experience elsewhere, (3) possession of the respective licenses, or (4) passage of a test pursuant to Paragraph 46 of this Order.

(c) Upon approval of the Administrator, the Unions may also keep on file for each workman who is listed with operating engineer qualifications on the Master Eligibility List a record of the precise machinery he has worked on, or if he has not yet worked, is qualified to work as determined by any tests pursuant to Paragraph 46 of this Order.

(d) Any workman seeking referral shall request the Unions to place the appropriate qualification Symbol or Symbols next to his name on the Master Eligibility List posted at the Hiring Hall, and shall sign and date his request. The Union shall notify the Administrator of its action taken on such requests within five (5) days. The Administrator shall insure that the Master Eligibility List is updated.

(e) In the event of a failure or refusal by the Unions to comply with a request for recording any specific qualification, the Unions shall within five (5) days of such failure or refusal, notify the workman and the

Administrator, giving the reason therefor. The Administrator shall then personally, or by designation of a person or body, determine whether the denial was justified or whether the workman has the specific qualification as claimed. Upon such determination of existing qualification, the Administrator shall record or cause to be recorded the appropriate symbol on the Master Eligibility List. The Administrator shall have authority to review and strike any individual not properly qualified.

(f) Specific qualifications, other than that described in subparagraph(a), which may be acquired as a result of any future or unanticipated technological developments shall not be the basis of referral based on specific experience unless and until application is made to the Administrator and approved by him that such new or additional specific qualification be included as a referral eligibility within the intent of subparagraph(a). The Unions shall submit a detailed description of the nature of the work, the specific qualification required and the program contemplated or designed by the Unions for the conduct of training courses for all interested registrants.

#### REGISTER FOR REFERRALS

33. The Unions shall maintain a register based on forms devised by the Administrator. All workmen, regardless of place of residence, who seek referral to employment in New York City must personally appear at the Hiring Hall and register on the "Hiring Hall sheet." All persons shall enter the date they first register on the Hiring Hall sheet and the list shall be maintained in chronological order. When a person seeks a job referral from the Hiring Hall sheet he must personally appear at the Hiring Hall each day

n-2007 he seeks a referral and check off on the Hiring Hall sheet that he is there. If he does not appear his name shall be stricken from the Hiring Hall sheet. Any person signing the Hiring Hall sheet for someone else shall be ineligible for job referrals for two months. The Hiring Hall sheet shall be kept in a public place at the Hiring Hall available for inspection on working days between 7:00 A.M. and 4:00 P.M.

REQUESTS BY EMPLOYERS FOR REFERRAL

34(a) Requests for the referral of workmen shall be recorded on sequentially numbered forms devised by the Administrator for that purpose hereafter known as "Contractor Sheets." The Unions' business agents or other personnel of the Unions charged with responsibility for recording employer requests for referral shall record requests in the order received each day by causing the following information to be obtained and recorded on said Contractor's Sheet:

1. Date and time of receipt of request, using time and date clock installed by Administrator.
2. Date workmen are required to start on the job.
3. Contractor's name, location of job site, number of men.
4. Specific qualifications as defined by Paragraph 32, and number of men in each category.
5. Expected duration of job.

(b) The Unions may not grant an employer's request for referral of a specific individual, other than a

master mechanic, foreman or deputy foreman. Nothing contained herein shall limit the Unions' obligation to grant employer's requests, pursuant to requirements of Federal, State and Local regulations or orders, or contracts based thereon, that non-white workmen be referred.

REFERRALS TO EMPLOYMENT

25. (a) The general objectives of these Rules and Procedures are to ensure that all eligible workmen, regardless of race or union membership, share equally in the available employment and that non-white workmen receive on-the-job training heretofore unavailable to them, and all referrals shall be made consistent with these objectives.

(b) The Union business agents shall be responsible for the referral of workmen from the Hiring Hall sheet. In carrying out their duties, the business agents shall:

1. Offer jobs in the order in which requests for workmen are received.
2. First announce to all registrants present at the Hiring Hall the job being offered, stating its location, expected duration if known, specific qualification required as defined by Paragraph 20 and the number of men in each category.
3. Except as provided in subparagraph(4), business agents shall make referrals in the following manner from those who are present in the Hiring Hall and who have signed the Hiring Hall sheet:



- i) Workmen who are on the Hiring Hall sheet in the order they appear thereon. The workman's specific qualification as listed on the Master Eligibility List or any separate operator's list shall be consistent with the employer's request under Paragraph 34.
  - ii) Workmen who accept any job referral shall be stricken from the Hiring Hall sheet.
  - iii) Workmen on the Hiring Hall sheet who refuse referrals on two or more days in any one week shall be placed at the bottom of the Hiring Hall sheet at the end of the week.
  - iv) The business agents shall record on the daily Hiring Hall sheet, in the "Remarks" column, any refusal to accept referral on a priority basis, noting also the "Work Number" for which the job was refused.
4. i) All non-white workmen seeking training as hoist operators with N.Y. City license A shall sign a "Come Training" List maintained by the Unions.

ii) When workmen are requested by employers to work as oilers, as defined in the collective bargaining agreements, these jobs shall be offered, on an alternating basis, to the qualified workman highest on the Hiring Hall sheet and the minority workman highest on the Hiring Hall sheet who is also listed on the Crane Training List.

5. The business agents shall record on the Hiring Hall sheet the "work number" next to each workman who accepts a job referral and shall record on the numbered "Contractor's Sheet" the names of the workmen referred to that job and their minority status.
6. Once referred to a job, a workman shall be given a "work slip" by the business agents, using a form approved by the Administrator, which they shall give to the employer on the job to which they are referred. No employee shall be hired without said slip.

OVERTIME

24. Union contractors shall take all steps to ensure that overtime is distributed equally to employees on each job location in the same job category. Individuals

who are not members of a well point gang shall not be assigned overtime well point work unless every member of the well point gang has previously refused overtime.

#### TRANSFERS

37. (a) Union Contractors are permitted to transfer workmen from job site to job site without the men registering in the Hiring Hall as long as there is no break in the continuity of the employment of such men. If any workman is laid off by a Union Contractor for more than three days, he is required to register for referral at the Union Hiring Hall in order to obtain further employment.

(b) The Union Contractors shall keep an appropriate record of each transfer pursuant to subparagraph (a) on forms promulgated by the Administrator. These records shall be available for inspection by the E.E.O.C. and the Administrator.

#### LAYOFFS

38. No workman shall be laid off until all workmen at his job performing work of a similar nature who commenced work subsequent to him have been laid off. Nothing in this paragraph shall derogate from the right of an employer to layoff workmen for cause. Any non-white workman who challenges the basis of his layoff under this Order shall notify the Administrator in writing within three (3) days of such layoff, setting forth his reasons for regarding the layoff as improper. The workman shall simultaneously send copies of said notice to the Union and his employer.

39. (a) The Administrator shall determine whether the records required by these Rules and Procedures (Paragraphs 30-36) can be maintained by a computer system and shall implement such a system unless he determines it



not to be feasible.

(b) The Administrator also shall be responsible for making a study of the Unions' and Union contractors' records on a periodic basis and for reporting all violations of these Rules and Procedures uncovered by the study to the Court, the Union and the E.E.O.C. Where feasible in the Administrator's discretion, said study may be done using computer techniques.

(c) Based upon his analysis of the data produced by the study, and any other information he receives, the Administrator, after consultation with the Union and the E.E.O.C., has the power to amend, modify, revise or change these Rules and Procedures, or any of the forms referred to herein to achieve the goals and objectives of these Rules and Procedures. The Administrator shall communicate any such amendment, modification, revision or change to the Union and the E.E.O.C. in writing, and either the Union or the E.E.O.C. may apply to the Court within fifteen days of the receipt thereof and seek a determination as to the validity of the Administrator's action.

#### PUBLICATION OF RULES AND PROCEDURES

40. The Unions shall mail a copy of these Rules and Procedures (Paragraphs 30-38 of this Order) to every person who is registered at the Hiring Hall, to all Union members and to all Union contractors, and, at all times, at least one copy shall be posted in an oversized form approved by the Administration in a public place at the Hiring Hall, and on all job sites.

41. During the period terminating December 31, 1977 which period may be extended upon application to the



Court by the Administrator) the Administrator may appoint from time to time an impartial monitoring agent for the Hiring Hall, who shall be responsible to the Administrator, and who shall perform such functions as the Administrator deems appropriate in order to enforce these Rules and Procedures. The Unions shall compensate said monitoring agent at a rate set by the Administrator and approved by the Court.

#### F. TRAINING AND APPRENTICES

42. Within two months of the entry of this Order, Local 15 and Locals 14-14E shall submit to the Administrator for his approval plans for the conduct of separate training programs to train operating engineers on the equipment within their respective trade jurisdictions.

43. Upon approval of said plans, the Unions shall operate their respective training programs in a manner and with sufficient equipment and instructors so that each program graduates a substantial number of non-white operators per calendar year. The Administrator shall also determine the frequency of the training of the number of enrollees and the rules for continued enrollment. Training shall be available during non-business hours, and enrollees shall not be restricted from working in lieu of attending training sessions, nor shall they be required to attend said sessions in order to be eligible for job referrals.

44. (1) The object of these training programs shall be to train and retrain workmen as equipment operators on a minimum of one piece of machinery, and satisfactory performance on one piece of machinery shall constitute completion of the training program. The Local 14 training program shall endeavor to train workmen so that they can

pass the New York City test for Hoist Machine operators, license A, and the Administrator shall ensure that sufficient enrollees in the program are being trained for said program. The Unions and contractors associations shall submit a plan to the Administrator for his approval which shall provide additional on-the-job training for non-whites in addition to the provisions of Paragraph 35(c).

(b) No more than one-third of the workmen in each training program shall be Union members seeking training as operators or retraining on additional equipment; the remainder shall be non-union members. The availability of such training shall be publicized by written announcements to Union members and other workmen and the public, as directed by the Administrator. Lists for enrollment shall be available in the Hiring Hall, and admissions to the program's openings for training and retraining shall be assigned on a chronological basis by the date of application for the particular piece of machinery the applicant desires training on, taking into account the obligation of each program to graduate a substantial number of non-white workmen per year.

45. Completion of the program shall be decided on the basis of ability to pass a practical test on one piece of machinery, as provided by Paragraph 46.

46. The Unions shall submit for the Administrator's approval a proposal for administration of a practical test for each piece of machinery within the Unions' trade jurisdiction, which tests shall be validated pursuant to E.E.O.C. Guidelines. The tests shall impose standards which are no higher than necessary to perform the work for a Union contractor and no higher than has heretofore been required of



white operating engineers in New York City. The Administrator may require any workman to take such a test to determine his qualifications for the Master Eligibility List. Passage of such a test qualifies a workman as an operating engineer for the Master Eligibility List.

47. The Administrator shall study and determine what, if any, additional training programs are necessary in order to train sufficient numbers of non-white workmen in non-operator's skills in order to meet the goals of Paragraphs 5 and 6, and shall require the Unions to implement such programs. Such programs shall not impose higher standards on non-white workmen than heretofore existed for white workmen, but rather shall train non-whites with the minimum necessary skills.

48. The Administrator shall study and determine what, if any, apprentice programs would enhance the employment opportunities of non-white workmen without increasing the standards for admission or job referrals or decreasing the salaries heretofore available to white workmen, and shall seek agreement between the Unions and the Union contractors and contractors associations on how to establish such programs.

#### G. BACK PAY, PENSION AND WELFARE BENEFITS

49. Any non-white who files a written claim with the Administrator on or before three months of the entry of this Order will be eligible for back pay from the particular Union involved in any month during which he meets the following criteria:

(a) presents evidence, including testimonial evidence from the trial of this action, but not limited to documents, of application for direct entry into the Unions,

for job referral by the Unions or for assistance from the Unions;

(b) Demonstrates before the Administrator, in light of this Court's conclusions in its Opinion dated May 6, 1976, that he was discriminatorily excluded from membership in the Unions or denied the opportunity for job referral or training by the Unions; and

(c) Demonstrates monetary damages suffered as a result thereof.

50. All non-whites who qualify for awards of back-pay, as described in Paragraph 49, shall be entitled to recover proven damages from the date the discrimination occurred through the date the Administrator certifies that the Unions have implemented Section E of this Order.

51. Back-pay damages shall be computed on the basis of the difference, if any, between (1) the average earnings by white members of the Union to which the claimant applied, as defined in Paragraph 49(a), in each of the affected calendar months, and (2) the amount of other employment income earned in lieu of a job with a Union contractor or public assistance received by the claimant. The claimant's earnings shall include the amounts, if any, that the claimant could reasonably have earned but for failure to take other work, but the Unions shall have the burden of proving the existence and amount of such earnings. However, for a basis of comparison, only the earnings of white Union members who worked more than ten days per month shall be used.

52. Once having shown discriminatory treatment by a Union in at least one month, a claimant shall receive back-pay damages for any additional months in which he can prove that he was ready, willing and available to take work under



the Union's jurisdiction but worked or sought work elsewhere because of a reasonable belief that this course properly served his interests in light of defendant Unions' discriminatory policies.

53. Payment of back-pay damages, as computed above, shall be made after determination by the Administrator of the claims, and their discretionary review, if necessary, by this Court. The Administrator shall hear whatever testimony is required and render findings and conclusions thereon. Where possible, the Administrator shall rely on the trial testimony of any particular claimant, supplemented by any necessary additional information. Claimants may support their claims by sworn oral testimony, and need not document such claims. Processing of claims shall commence immediately upon receipt thereof and the Unions shall make full payment thereon within thirty days of decision by the Administrator.

54. The thirtieth day after the claimant's first application with the Union for either a job referral or assistance or union membership shall be known as the claimant's eligibility date:

(a) the claimant shall receive from the respective Union full compensation for any health and welfare benefits which he personally incurred after the eligibility date, and which would have been paid for by any of the health and welfare programs to which the Unions belong, if the claimant had been a Union member as of the eligibility date;

(b) each claimant's eligibility for and level of pension benefits shall be determined by the pension funds to which the Unions belong using the claimant's

eligibility date. The Unions shall take whatever steps are necessary to achieve this result and make whatever payments are necessary to the pension funds for this purpose in order to make such funds actuarially sound to make such pension payments to claimants, or the Union shall make such payments directly to the claimant;

(c) the Administrator shall hear all claims under (a) and the Unions shall make any payments required in the same manner as provided for back-pay claims. The Administrator shall also review with the Unions and the pension funds the necessary steps to comply with (b) and shall direct and assure the implementation of (b) on or before April 1, 1977.

55. In the event of any violation of this Order which results in the loss of work opportunity or other benefits to any non-white workman, the Administrator shall require the responsible Union and/or Union contractor to make payment to the workman fully compensating him for such loss of work or benefit on the basis of the procedures set forth in Paragraphs 49-54.

#### H. GENERAL PROVISIONS

56. (a) Within 60 days of the date of this Order the Unions and all members of the contractor associations shall permanently post conspicuous notices, in Spanish and English, in form, language and locations approved by the Administrator, at the Unions' offices and Hiring Hall, all jobs sites and each contracting employer's principal place of business, advising individuals of their rights under this Order.

(b) The Unions shall also send similar notices, as approved by the Administrator, to all minority

members of the Unions, and to all other minority individuals and other individuals and organizations as directed by the Administrator.

(c) The Unions and all members of the contractors associations shall keep available for inspection at the Unions' offices and Hiring Hall and each contracting employer's principal place of business, a copy of this Order.

57. Until such time as the Administrator finds it unnecessary, or revises the following requirements, in order to assure attainment of the interim and final goals of this Order,

(a) the Unions shall publicize in at least two minority newspapers and on at least two minority radio stations, the selection of which and the content of which shall be approved by the Administrator, on a regular monthly basis, the nondiscriminatory training, employment and union membership opportunities available through the Unions, the procedures for attaining such opportunities, and a statement that these opportunities are available regardless of race, color or national origin; and

(b) the Unions shall also regularly send informational circulars to guidance counselors at the local high schools and vocational schools in non-white areas, to the New York State Department of Labor for dissemination to public and private employment agencies in the local area, to Recruitment and Training Program, Inc., to the New York City Bureau of Labor Services, to the United States Department of Labor and to the Director of Training Programs, Office of the Assistant Secretary of Defense for Manpower Affairs, advising them of this Order, the aforesaid opportunities, and



that said opportunities are available regardless of race, color or national origin.

58. The terms of this Order shall be liberally construed to achieve the goals of eliminating all discriminatory practices of the Unions and the effects thereof and providing equal work opportunities and other benefits to non-whites.

59. All records and lists required by this Order shall be maintained for ten years, and shall be made available for inspection and copying by the parties and the Administrator on reasonable notice during regular business hours or at other mutually convenient times without further Order of this Court.

60. At any time, any of the parties herein may apply to the Administrator and then to the Court for the purpose of seeking additional orders to ensure the full and effective implementation of the terms and intent of this Order.

61. This Court shall retain jurisdiction over this action to ensure compliance with the terms of this Order and to enter such additional orders as may be necessary to effectuate equal employment opportunities for non-whites and to grant other appropriate relief.

62. The provisions of Paragraphs Five through Fifty-seven of this Order shall remain in effect until the percentage goals of Paragraph Five have been fully met, or until September 1, 1981, whichever occurs later.

63. Plaintiff shall be awarded the costs of this lawsuit and it shall submit a bill of costs to the Clerk of



n-2047

the Court within twenty days of the date of entry of this Order.

Deeds: New York, New York

September 1, 1976

*Charles H. Tenney*  
CHARLES H. TENNEY  
United States District Judge

*9/1/76*  
*Edward J. Berglund*  
*C. ERIC*

*10/1/76 - The Appellants in opposition. Bill of Costs as taxed in the sum of \$11,691.45, on favor of Plaintiff, or against defendant Local 14 and Local 15, who are not party to the judgment.*

*Edward J. Berglund*  
*C. ERIC*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Plaintiff,

-against-

LOCAL 14, INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL 15,  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, THE IRON LEAGUE OF  
NEW YORK CITY, INC., THE  
CONSTRUCTION EQUIPMENT RENTAL  
ASSOCIATION, GENERAL CONTRACTORS  
ASSOCIATION OF NEW YORK CITY,  
BUILDING CONTRACTORS' AND MASON  
BUILDERS ASSOCIATION, THE CEMENT  
LEAGUE, STONE SETTING CONTRACTORS'  
ASSOCIATION, ALLIED BUILDING METAL  
INDUSTRIES, RIGGING CONTRACTORS  
ASSOCIATION, CONTRACTING PLASTERERS  
ASSOCIATION, and EQUIPMENT SHOP  
EMPLOYERS,

Defendants. :  
-----x

: SUPPLEMENTAL ORDER

: 72 Civ. 2498 (CHT)

On application of the Administrator, the Order and  
Judgment entered herein on September 1, 1976 is supplemented  
as follows:

1. The first sentence of paragraph 32(b) is hereby  
amended to read as follows:

(b) The foregoing qualifications may be  
expanded by the Administrator upon the  
application of any party, employee or  
other interested person affected by  
this Order.

2. Paragraph 33 of said Order and Judgment is

Exhibit "A"

hereby supplemented by adding the following at the end thereof.

The initial "Hiring Hall sheet" shall be established and put into effect in accordance with procedures approved by the Administrator. If any union member or non-union person knowingly misrepresents information required by such procedures as to the amount of time he has worked, and such misrepresentation affects his priority on the Hiring Hall sheet, such person's name shall be placed at the bottom of the Hiring Hall sheet. The Administrator shall hear and determine any dispute with respect to such misrepresentation, which determination shall be appealable to the Court as otherwise provided for herein.

Dated: New York, New York  
*Oct 14*, 1976

/s/  
CHARLES H. TENNEY  
United States District Judge



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

-against-

AFFIDAVIT IN  
SUPPORT OF STAY

72 Civ. 2498 (CIT)

LOCAL 14, INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL 15, INTER-  
NATIONAL UNION OF OPERATING ENGINEERS,  
THE IRON LEAGUE OF NEW YORK CITY, INC.,  
THE CONSTRUCTION EQUIPMENT RENTAL  
ASSOCIATION, GENERAL CONTRACTORS  
ASSOCIATION OF NEW YORK CITY, BUILDING  
CONTRACTORS' AND MASON BUILDERS ASSOC-  
IATION, THE CEMENT LEAGUE, STONE SETTING  
CONTRACTORS' ASSOCIATION, ALLIED BUILDING  
METAL INDUSTRIES, RIGGING CONTRACTORS  
ASSOCIATION, CONTRACTING PLASTERERS  
ASSOCIATION AND EQUIPMENT SHOP EMPLOYERS,

Defendants.  
-----X

STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NEW YORK )

Harold R. Bassen, being duly sworn, says:

1. I am an attorney duly admitted to practice in both the New York State and New York Federal District Court Bars and I am also the Executive Director of Allied Building Metal Industries, Inc. (hereinafter "Allied"), one of the named defendants in the above-captioned action. I make this affidavit in support of that portion of the application of defendant Local 14 of the International Association of Operating Engineers (hereinafter "Local 14") which seeks to stay the provisions of the Order and Judgment of the United States District Court, Southern District of New York, dated September 1, 1976, (Teinley J.) that requires contractors to accept for employment as operating engineers only those people who are referred from a sign in sheet maintained in what used to be a referral hall maintained by Local 14 and by Local 15.



2. I should point out that Allied consists of approximately 57 firms that are engaged in either the fabrication or erection of steel or both such aspects of work. Those members of Allied engaged in the erection of steel have collective bargaining agreements with the various structural and ornamental iron worker locals throughout the greater metropolitan area. Additionally, such members of Allied have agreements with both Local 14 and Local 15 of the Operating Engineers. However, in order for this Court to fully understand the reasons for Allied's support of this stay, I believe that it would be helpful if I briefly described some of the aspects involved in the erection of a steel structure.

2. The steel is normally delivered to a job site by truck. Thereafter, the crew of iron workers sorts out the various columns and beams which are to be used in the structure. After the operator of the crane and the oiler have assembled the crane and put it into working order, the various pieces of steel are then lifted from the ground by such crane, which is operated by a member of Local 14 and serviced by an oiler, who is a member of Local 15, and are set into place by the iron workers. Needless to say, such work is extremely hazardous from the outset of construction. However, as the structure progresses upward the hazards increase. Often the crane operator cannot hear or see the members of the iron working team to whom he is delivering the steel beam or column. In such cases the delivery of the steel is directed by a series of complicated bell or hand signals which are given to the crane operator by an experienced iron worker, who is sometimes thirty to fifty stories above the operator. The coordination between the operator of the crane and the signalman iron worker is, of course, crucial since the

steel must be slung to both a height and inboard distance which will enable the iron working crew to grab the piece of steel and set it in its proper place without falling off the structure or being hit by the swinging piece of steel.

4. The members of Allied engaged in the erection of steel structures invariably rent long-boom cranes or specialized cranes and derricks (hereinafter "equipment") from companies (hereinafter "vendors"). In addition, to the rental of the equipment, the vendors supply to the members of Allied an operator and an oiler (members of Local 14 and Local 15, respectively) who are thoroughly experienced in the erection of steel. It should be pointed out, however, that the operator of the crane, as well as the oiler, become the employees of Allied's members as soon as the equipment is picked up by the operator and oiler for the account of the vendee. Additionally, the responsibility for each piece of rented equipment, which can, in some instances, be worth as much as \$250,000 or more, devolves upon the member of Allied, who is the vendee.

5. At least four basic areas of risk are, therefore, assumed by a member of Allied that is engaged in steel erection: First, injury to the general public during the course of such operations; second, injury to its employees, particularly iron workers; third, damage to the vendor's equipment; and fourth, suffering economic loss by reason of not doing the job efficiently or within the time prescribed by contract.

6. In connection with the areas of risk denominated as "second" and "fourth" above, it should be pointed out that the iron workers employed by the members of Allied that are engaged in steel erection have, in the past, walked off the job where

the vendor has supplied an operating engineer that does not know how to safely and properly erect steel. Such action by the iron workers not only costs the member of Allied upwards of \$1,000 a day in lost wages but subjects such member of Allied to lost profits, as well as liquidated damages for not completing the job on time. To safeguard against such situations, the members of Allied have insisted that the vendors only provide them with operators who are experienced and competent in steel erection.

7. In order to operate a crane in the City of New York, the operator of such crane must possess either an A or a B\* hoisting license issued by the City. However, there are many operators who possess such licenses but have never in their life time set steel. Unfortunately, under Judge Tenney's Order and Judgment dated September 1, 1976, the vendors must call the halls maintained by the Unions herein for operators and oilers to operate each piece of rental equipment. If the Unions send out, as they must, an engineer and an oiler from the sign in sheet, who possesses the necessary license to operate the prescribed boom length of the crane involved and a man, denominated as an oiler, both the vendor and subsequently the member of Allied must accept such engineer and oiler, even though neither of them has ever set steel or operated and assembled the type of crane \*\*that is to be utilized on the job site.

\* The designations A and B relate to the length of a boom on the crane that the operator is qualified to handle.

\*\* There are many different types of cranes, each having different controls and problems with respect to their operation and assemblage at the job site.



8. I must emphasize to this Court that the members of Allied are not supporting this application for a stay in order to perpetuate or encourage any discriminatory policies alluded to in Judge Tenney's Order and Judgment. Rather, this is an attempt on the part of the members of Allied to correct a practical problem now created by the Order and Judgment. Had the District Court done what it said it was going to do by the terms of its Pre-Trial Order i.e. first determine if there was any liability under Title VII and then, if necessary, determine in subsequent proceedings what remedial and practical relief should be ordered, the members of Allied would, at such subsequent hearing, have had the opportunity to (1) explain its problems to Judge Tenney and (2) assist in any way it could to cure the problems which the trial court referred to in its opinion.

9. I must emphasize that the Contractor defendants, such as the members of Allied, were made defendants in the within action according to the complaint "for the purpose of relief only". This pronouncement by the plaintiff did not mean to the members of Allied or to myself that in a time of extreme economic difficulty for our members the areas of difficulty outlined in paragraphs "5" and "6" herein had to be increased by judicial fiat without the opportunity to be heard.

10. Allied anticipates serving and filing, within the next week, a Notice of Appeal from the Order and Judgment in this action signed by Judge Tenney and dated September 1, 1976.



and open hearing on the manner in which the trial court was attempting to fashion relief insofar as such relief affected its members and that the denial thereof requires this Court to remand such proceedings to District Court for further proceedings.

11. Accordingly, it is respectfully requested that this Court grant a limited stay to Local 14 as requested in its moving papers herein.

Harold R. Bassen  
Harold R. Bassen

Sworn to before me this  
day of October, 1976

Albert I. Schmitt  
ALBERT I. SCHMITT  
NOTARY PUBLIC, State of New York  
No. 31-3508325  
Qualified in New York County  
Commission Expires March 30, 1979

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Nov 10, 1976

Not signed. Matter  
pending before Court of  
Appeals

CST  
1525

-----X  
FEDERAL EMPLOYMENT OPPORTUNITY COMMISSION, :

Plaintiff, :

-v-

: ORDER TO SHOW CAUSE

LOCAL 14 INTERNATIONAL UNION OF OPERA- :  
TING ENGINEERS, LOCAL 15 INTERNATIONAL :  
UNION OF OPERATING ENGINEERS, THE IRON :  
LEAGUE OF NEW YORK CITY, INC., THE :  
CONSTRUCTION EQUIPMENT RENTAL ASSOCI- :  
ATION, GENERAL CONTRACTORS ASSOCIATION :  
OF NEW YORK CITY, BUILDING CONTRACTORS' :  
AND MASON BUILDERS' ASSOCIATION, THE :  
CEMENT LEAGUE, STONE SETTING CONTRACTORS' :  
ASSOCIATION, ALLIED BUILDING METAL :  
INDUSTRIES, RIGGING CONTRACTORS :  
ASSOCIATION, CONTRACTING PLASTERERS :  
ASSOCIATION, and EQUIPMENT SHOP :  
EMPLOYERS, :

Defendants. :

WITH A STAY  
72 Civ. 2498 (CHT)

-----X  
Upon the annexed affidavit of William C. Finneran, Jr.,  
sworn to November 10<sup>TH</sup>, 1976, and sufficient cause appearing there-  
for, it is hereby

ORDERED, that plaintiff show cause before the Honorable  
Charles H. Tenney, United States District Judge, at the United  
States Courthouse, Foley Square, New York, New York, Room \_\_\_\_\_  
on the \_\_\_\_ day of November, 1976 at \_\_\_\_\_ or as soon  
thereafter as counsel can be heard, why an order should not be  
entered herein staying the ~~above~~ <sup>FINAL</sup> order and judgment as it relates  
to the General Contractors Association of New York, Inc. and its  
members; and also granting, to the General Contractors Associa-  
tion of New York, Inc., an opportunity to be heard as to the form  
of the relief as it relates to the above named association. IT IS

FURTHER

ORDERED, THAT PENDING THE HEARING OF THE ABOVE  
MOTION THE FINAL ORDER AND JUDGMENT OF THIS  
COURT HEREIN IS STAYED; AND IT IS FURTHER

ORDERED, that a copy of this order and the papers upon  
which it was granted be <sup>PERSONALLY</sup> served upon the attorney of record for  
plaintiff and <sup>BY MAIL TO</sup> the other defendants on or before November 10, 1976  
and that service by <sup>CERTIFIED</sup> ~~registered~~ mail shall be deemed good and  
sufficient service.

Dated: New York, New York  
November 10, 1976

\_\_\_\_\_  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, :

PLANTIFF, :

- against - :

LOCAL 15 INTERNATIONAL UNION OF OPERATING :  
ENGINEERS, LOCAL 15 INTERNATIONAL UNION :  
OF OPERATING ENGINEERS, THE IRON LEAGUE : MOTION FOR A  
OF NEW YORK CITY, INC., THE CONSTRUCTION : STAY PENDING  
EQUIPMENT RENTAL ASSOCIATION, GENERAL : A HEARING ON  
CONTRACTORS ASSOCIATION OF NEW YORK CITY, : THE MATTER  
BUILDING CONTRACTORS' AND MASON BUILDERS' : OF RELIEF  
ASSOCIATION, THE CEMENT LEAGUE, STONE :  
SETTING CONTRACTORS' ASSOCIATION, ALLIED :  
BUILDING METAL INDUSTRIES, RIGGING CON- : 72 Civ. 2498 (CHT)  
TRACTORS ASSOCIATION, CONTRACTING :  
PLASTERERS ASSOCIATION, and EQUIPMENT :  
SHOP EMPLOYERS, :

Defendants. :

- - - - - x

WILLIAM C. FINNERAN, JR., being duly sworn, deposes and  
says:

1. Deponent is General Manager of The General Contractors' Association of New York, Inc., (incorrectly referred to in the above caption as "General Contractors Association of New York City") hereinafter referred to as the "GCA", and is familiar with the facts hereinafter set forth.

2. This affidavit is submitted in support of the GCA's application for a Stay, Pending a Hearing as to the relief set forth in the Order and Judgment of September 1, 1976, ("Final Order").

3. The original action in this matter, instituted by the United States of America and succeeded to herein by the Equal Employment Opportunity Commission, sought relief from the violations

RETYPE FOR APPENDIX



of Title VII, of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 e, et seq., and from the interference with the implementation of Presidential Executive Order 11246, forbidding racial discrimination in employment by government contractors.

4. Disposition of the above mentioned action, after a hearing on the issue of liability only, with its finding against Locals 14 and 15, resulted in the Order and Judgment of the Honorable Charles H. Tenney, being entered on the first day of September, 1976, which Order directed, in substance, the following: the Unions Locals 14 and 15 are permanently enjoined from engaging in any act of discrimination, in any program of its Union practice, including but not limited to, recruitment, selection, training, admission to membership to the Union and Union programs and that said Union shall not take any other action which would deprive or tend to deprive any individual of employment opportunities with union contracts or otherwise adversely affect his or her status as an employee of union contractors or members of the Unions or their programs; and that said Union shall administer all of the affairs of the Union and its programs so as to insure that no individual is excluded from equal work opportunities; and that certain testing programs be initiated for minority members so that admission to the Union, its programs and job referrals be available to the minority members; and further that an "Affirmative Action Program", so ordered by the Court, be initiated to achieve a non-white percentage of 36% in the Union's respective membership and any of its training programs by 1980. (The above synopsis is respectfully submitted to this Court for its convenience.)

RETYPE FOR APPENDIX

5. On September 9, 1974, pursuant to Rule 16, of the Federal Rules of Civil Procedure a Pre-Trial Order was issued.

6. The Pre-Trial Order (a copy of which is attached hereto and made a part hereof as Exhibit "A") at page 11, paragraphs 6(a), (b), (c) and (d) therein, set forth the following positions of the GCA that:

(a) GCA is not an association of contractors engaged in industry affecting commerce within the meaning of 42 U.S.C. §2000 e.

(b) GCA has no collective bargaining agreements with the defendant unions.

(c) GCA is not properly named as a defendant under Rule 19(a), Fed. R. Civ. P.

(d) The action as against GCA should be dismissed in its entirety.

7. Your deponent reiterates and reaffirms the above and respectfully directs the Court's attention to §517(a) of the Not-For-Profit Corporation Law of the State of New York wherein it states on advice of counsel that:

"The members of a corporation shall not be personally liable for the debts, liabilities or obligations of the corporation."

8. Your deponent contends on advice of counsel, that while the GCA is a party to this action, that its members the "contractors", named in the Final Order, were never made a party to this action and are not barred by said Final Order.

9. The above mentioned Pre-Trial Order, contained a stipulation therein, which stated, in its entirety, that:

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"It is stipulated by and between Plaintiff and Defendant, General Contractors Association of New York, Inc., (incorrectly designated herein as General Contractors Association of New York City) that Plaintiff's Complaint does not assert any claim for liability against defendant General Contractors Association of New York, Inc.

It is further stipulated by and between Plaintiff and Defendant, General Contractors Association of New York, Inc., that, in the event of any proceeding for the purpose of establishing relief, on the basis of any judgment for liability in the trial herein, that in such a proceeding the General Contractors Association of New York, Inc. shall have a full opportunity to offer proof and defend against the allegations in the complaint of Plaintiff that (1) the General Contractors Association of New York, Inc. is a proper defendant for purposes of relief under Rule 19(a) of the Federal Rules of Civil Procedure and (2) that the General Contractors Association of New York, Inc. is an association of contractors engaged in any industry affecting commerce within the meaning of 42 USCA §2000 e, which has collective bargaining agreements with the defendant unions herein."

10. Such stipulation was never adhered to and GCA has been denied an opportunity to be heard as to the substantive and procedural forms of relief provided in the Final Order herein. Specifically, GCA was denied the opportunity of a hearing (a) to establish that GCA is a non-employer of persons or job titles covered by said Order and has no role in the relief granted and thus is not a necessary party under Rule 19(a) Fed. R. Civ. P.; (b) to inform the Court as to the necessity of providing in the Order safety procedures to ensure the competency of the persons to be employed; (c) to point out to the Court that the provision for a hiring hall in said Order represents a substantial change in the collective bargaining agreements between the unions herein

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and the contractors and the contractors signatory to the said agreements are not before the Court. GCA is not a party to said agreement.

11. At a meeting held before the Court on July 26, 1976, the form of the Final Order was discussed by and between the parties and the Court.

12. On pages 27, 28, 29 and 30 of the transcript of the July 26th discussions about the Final Order, the position or status of the GCA was discussed with His Honor, at which time His Honor said at page 29, line 8:

"The Court: I will have a look back over the Pre-Trial Order and all that because there is some question in my mind in view of the position as to their (GCA) status in the trial we had."

13. It was obvious to His Honor at that point in that time that the status of the GCA was not clear.

14. Again, it must be noted that no hearing as to relief and/or liability was ever held with respect to the GCA or its members.

15. The Court recognized the lack of representation offered to the GCA and the members when it stated at page 29 of the July 26th proceeding:

"The Court: All right, we are going ahead. I said I will take a look at the Order and maybe we will have to set this thing down for trial on possible practices by the contractors over the past years which would warrant injunctive relief. So I would be prepared, if I were you, to have at least some possible further hearing."

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and again at page 41:

"The Court: Maybe we should have some hearings about the contractors and what they are doing."

16. At page 61, line 11 of the transcript of July 26, 1976, His Honor so aptly placed the entire issue in perspective by stating that:

"The Court: I don't know whether you [GCA] did it [discriminate] before or not because there certainly was no exculpation of the industry in my opinion. It was excluded. Okay."

17. The conclusion of His Honor, hereinabove made reference to, indicated that there had been no testimony taken during any stage of the proceedings as to the issue of the GCA's liability and that the denial of such a hearing violates GCA's right of procedural and substantive due process.

18. Mr. Devorkin, the U.S. Attorney, stated at page 61 of the transcript of July 26, 1976, the following:

"Mr. Devorkin: It if were necessary to seek a judgment of liability against the contractors, we are prepared to do that. We proved at the trial acquiescence and practice have the same effect. If we had to get a judgment of liability against the contractors we would be prepared to go through depositions and discovery and a trial for that purpose, but I don't think it is necessary. They are not being held financially accountable for anything that has happened here. They are just being equitably ordered to insure that the Union -- that this Order works, to follow the terms of the Order. They are an integral part of the industry and it is necessary to do that."

19. From the U.S. Attorney's statement, it is clear that no fact or allegation as to liability has been asserted

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against the GCA's members and that no liability whatsoever had been proved against the GCA's members.

20. The U.S. Attorney takes the position that the contractors are not going to be held financially accountable due to the form of relief implemented in the Final Order and Judgment.

21. The Final Order and Judgment now creates a situation wherein the contractors themselves will be held liable for the actions of its operating engineers who will be less experienced than those operators previously hired directly by the contractors themselves.

22. The Final Order and Judgment may raise questions to the issue of the possible liability of the Administrator as well for the negligent acts of the inexperienced operating engineers.

23. It should be obvious that the contractors (members of the GCA) are financially accountable ["for anything that has happened here"] as the result of the relief framed with the Final Order and Judgment of September 1, 1976 and that liability for any negligent operation of contractor's equipment by unqualified or inexperienced operators as a result of the form of relief set forth, does in fact fall directly within the parameters of the contractor's liability.

24. The lack of a hearing as to the safety aspects involved in the implementation of the Order precluded GCA from presenting testimony as to the nature of the risk involved in the operation of all the equipment covered by the Orders herein and the need to adopt procedures which will ensure competent operators. It would seem that the Order in its present form would allow unskilled operators behind the controls of sophisticated and costly construction equipment and, when used by

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such unskilled operators, such equipment will thereupon become a dangerous weapon creating highly hazardous conditions to the general public and workmen in the area.

25. In seeking a hearing on these safety aspects, deponent is not seeking to delay or inhibit measures to remedy the injustices of any discrimination, but simply to persuade this Court that the remedies to correct any past improper practices be balanced by provisions to reduce the possibility of death or injury which could be caused by incompetent or inexperienced operators.

26. Deponent submits to this Court that the proposed implementation of the Order and Judgment in question does not consider the necessary skilled construction operating procedures of extremely sophisticated equipment which belongs to and/or is the responsibility of the contractors at expansive construction sites and that the lack of the necessary skilled operators might possibly cause injury to the general public (as well as to workmen) within, adjacent and contiguous to the construction sites and regrettably to the pedestrian and vehicular public which move in and around the construction sites within the geographical jurisdiction of Local 14 and Local 15.

27. Further, in the light of the gravity of the matter and to avoid such irreparable harm, it is respectfully submitted that there should be no implementation of the Order and Judgment of September 1, 1976 until there has been a full and exhaustive hearing as to the form and substance of the relief.

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28. The right of equal opportunity to work, while appearing to be the primary object, is neither the exclusive object, nor the most important object. Of equal, if not paramount importance, is the security and protection of life against injury to the public and workmen concerned.

29. It is the considered opinion of your deponent that the implementation of the Order and Judgment in question would create a situation wherein workmen, just barely trained in the operation of sophisticated and dangerous equipment, could cause injury and death to the public and workmen affected by the operation of the construction equipment in an industry which already suffers by seeing such injury and loss of life during the construction of such expansive projects from uncontrollable causes.

30. Deponent respectfully requests that His Honor grant the Application presently before him, not for the purpose of denying the minority members of the society the right to work within the trade unions so mentioned, but for the purpose of reaching that goal after a more thoughtful remedy can be reached so as not to harm the unrepresented and greatly concerned citizenry in this action and at the same time provide equal employment opportunities for all.

31. The contractors' responsibility and its requirement for affirmative action has been directed upon the GCA and its members in spite of the lack of a finding or even allegation of any liability, and as to the GCA's members, despite the fact that they were not parties therein.

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32. The "contractors" themselves, while never named as a party to the action, and without the opportunity of being heard as to the form of relief, are now being directed to act and are made subject to the Order and Judgment.

33. The "contractors", named repeatedly and throughout the Final Order and Judgment, never had the opportunity to be heard at any hearings as to the issue of relief or the propriety thereof and therefore were denied their constitutional right of "Due Process".

34. On behalf of the GCA, it is further respectfully submitted that the Final Order and Judgment of September 1, 1976 provides for the GCA members to hire only from Hiring Halls and thereby violates the contractual rights of its members. A hearing on this matter is necessary to consider the issue of whether this Court has the power to change a substantive provision of a collective bargaining agreement, particularly in light of the fact that a party to such agreements were not before the Court.

35. The "Hiring Hall" mandate also places a new duty upon the contractor, which heretofore it did not have, and that is the new requirement to police its equipment so that it can be secure in its knowledge that its sophisticated equipment is being operated safely so as to prevent injury to the general public and workmen alike and to preclude liability caused from the negligent operation therefrom by unskilled operating engineers.

36. The contractor also has a duty to the operator himself, to protect him from his own negligent or unskilled actions.

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37. The concept of "Hiring Halls", heretofore not a subject of collective bargaining agreements, has been avoided for precisely the reasons cited within paragraphs 34 and 35 above, in that hiring halls, by their very nature do not allow the contractor the necessary latitude to choose its operators based upon the skills necessary to operate the specific pieces of equipment in question.

WHEREFORE, your deponent prays for a "stay" pending a full and complete hearing by and between all parties, so that all issues of relief may be considered to accomplish the goals of the Order and Judgment of September 1, 1976 within a framework of practicality, so that all parties to be affected by such Order and Judgment may be heard and that Due Process under the law be had. No previous application has been made for this relief.

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William C. Finneran, Jr.

Sworn to before me this  
10th day of November, 1976.

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Notary Public

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Pre-Trial Order, attached to the affidavit,  
is omitted, since it is printed above,  
pp. 31-69.